SENATE—*Monday, September 12, 1988*

(Legislative day of Wednesday, September 7, 1988)

The Senate met at 3 p.m., on the expiration of the recess, and was called to order by the Honorable ALAN J. DIXON, a Senator from the State of Illinois.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Hear, O Israel: The Lord our God is one Lord: And thou shalt love the Lord thy God with all thine heart, and with all thy soul, and with all thy might. And these words, which I command thee this day, shall be in thine heart: And thou shalt teach them diligently unto thy children, and shalt talk of them when thou sittest in thine house, and when thou walkest by the way, and when thou liest down, and when thou risest up. And thou shalt bind them for a sign upon thine hand, and they shall be as frontlets between thine eyes. And thou shalt write them upon the posts of thy house, and on thy gates.—Deuteronomy 6:4–9.

God of Abraham, Isaac and Israel, sovereign Lord of history and the nations, we join with the Old Testament people of God in celebrating Rosh Hashanah, this 5,747th Jewish year. May this be for all of us, as it is for them, a time for penitence and spiritual renewal. Help us all to recognize our profound need to love God with all our being and to manifest this love in deed as well as in word.

To the glory of Thy name, for our sakes and for the sake of the Nation and the world. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. STENNIS].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, September 12, 1988.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ALAN J. DIXON, a Senator from the State of Illinois, to perform the duties of the Chair.

JOHN C. STENNIS,
President pro tempore.

Mr. DIXON thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the majority leader is recognized.

Mr. BYRD. I thank the Chair.

THE CHAPLAIN'S PRAYER

Mr. BYRD. Mr. President, I thank the Chaplain for his invigorating, refreshing, thoughtful, and timely prayer.

THE FOREST FIRES IN THE WEST

Mr. BYRD. Mr. President, extreme weather conditions have created a critical problem in our Nation's forests, as evidenced by the critical forest fire situation in the West. As of today, there were 27 major forest fires in the West, across six Western States. Fifty-eight new fires were reported in the last 24 hours.

At the present time, there are crews totaling over 17,000 individuals fighting forest fires in the West—the largest firefighting crew ever assembled by the U.S. Forest Service. These crews include regular Forest Service personnel, State employees, and private individuals who have been trained to fight forest fires in emergency conditions.

West Virginia is not without its own problems because of the danger the drought has posed to our own forest lands. Yet, four crews of firefighters of about 100 West Virginians from Elkins, Parsons, Marlinton, Richwood, White Sulphur Springs, Petersburg, Morgantown, and other areas of the State have answered the call and were sent to fight forest fires in Idaho and Montana. These men and women worked side by side with crews from all over the country in trying to contain those forest fires.

Firefighters are working around the clock, with little or no rest, and are putting their lives on the line. I commend those valiant souls for their untiring efforts and for their courage in facing—what must seem at times—insurmountable odds.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the Republican leader is recognized.

Mr. DOLE. Mr. President, I yield first to the distinguished Senator from Wisconsin, then I would yield 5 minutes from leader time, following the Senator from Wisconsin, to the Senator from Vermont, and then I will reclaim the remainder of my time.

Mr. PROXMIRE. I thank the Republican leader.

The ACTING PRESIDENT pro tempore. The Senator from Wisconsin is recognized.

WHY IS NUCLEAR ARMS CONTROL A FORGOTTEN ISSUE?

Mr. PROXMIRE. Mr. President, what has happened to arms control as a concern of the American people and as a leading issue in the great American Presidential campaign? We still live in the nuclear age. Nuclear weapons more than ever constitute the prime threat to human life. The international competition to produce ever more destructive and deadly weapons races on. But as a burning political issue arms control has disappeared. In the two great national conventions, few words were spoken about arms control. Is this because the superpowers have at long last begun to agree not only to limit arms but—as in the now ratified INF Treaty and the START Treaty—now in the process of negotiation, the superpowers are making such progress with overwhelming bipartisan support that we have reached an agreement on nuclear weapons arms control within our country as well as internationally? No way.

The grim fact, Mr. President, is that the nuclear weapons arms race rushes on more dangerously than ever. The American people, Members of the Congress and even the administration itself are being deceived by a giant nuclear weapons numbers game. The great majority of people in our country and virtually all Members of the Congress believe that arms control has been reducing the nuclear threat by U.S.-U.S.S.R. agreements to eliminate all intermediate range nuclear missiles from the arsenal of both superpowers, and by working toward an agreement to slash all strategic missiles in the arsenal of both superpowers by about 50 percent—the START Treaty. Most Americans believe that these agreements will significantly reduce the deadly force of the world's nuclear stockpile. President Reagan and his administration and both Democratic and Republican leaders in the Congress emphatically and loudly support this view. There has been little publicly expressed disagreement from the

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

arms control community. So what is there to argue about? Indeed in this country of widely divergent editorial views vigorously expressed in hundreds of widely read newspapers and scores of nationally circulated periodicals, arms control and the international nuclear arms race that used to be the hottest of subjects has almost disappeared. Even the mavericks in our great universities of the country, those who are noted for their affection for vivid disagreement with the status quo on every subject of significance, have fallen silent on arms control. Why is this? It is because we are all bewitched by the numbers. If Gorbachev and Reagan can agree how can anyone disagree? The challenge to the skeptical is even stronger. Disagreement with the shared opinion of the American President and the top cop in the Soviet Union might be an inviting exercise for some skeptics. But how can they disagree with the numbers? How can any sane person who wants to live and wants their children and grandchildren to carry on, resist a superpower agreement that would retire and destroy 50 percent of all the nuclear weapons in the superpower arsenals?

Let me tell you how. The reason the agreements with the Soviet Union should not be the occasion for celebration of the success of arms control is that we have reduced the number of warheads before and sharply reduced them while massively "improving" the deadly power of our arsenal. From a peak of 32,000 nuclear warheads in 1967, the U.S. stockpile diminished by nearly 25 percent to about 26,000 in 1983 according to the State Department, the Defense Department, and other sources. Meanwhile, the Congress was approving nuclear weapons budgets that increased from $2.8 billion in 1980 to $6.8 billion in 1984. These included by far the largest single year increases in the nuclear weapons program in history.

Now, as anyone who served in the Congress for more than a few years knows, there is no group in the world more skilled at wasting money than the U.S. Department of Defense. But, Mr. President, no one can tell this Senator that when the number of nuclear warheads are sharply declining and the appropriations for those warheads are rising by more than 150 percent in 5 short years that we are reducing the deadly capability of our nuclear weapons. So what is the explanation? The explanation is that the nearly 10,000 strategic warheads now in the U.S. arsenal are more potent and far more potent than the larger number of a few years ago. Sure the numbers decline, but the technology races on. Each warhead is more reliable. Each warhead can be delivered with greater accuracy. Each warhead can penetrate more surely. Each warhead has a surer kill capacity. Each warhead is far less vulnerable.

Consider the significance of the finding by the National Academy of Science that if 1 percent of the Soviet nuclear arsenal should strike American cities we would have between 35 and 55 million dead Americans. The key phrase is—if the Soviet missiles should strike their targets. So what is the increased U.S. billions of dollars poured into nuclear weapons going for if it is not to increase the number of nuclear weapons? It is going to make sure that a higher percent of our nuclear weapons will strike their Soviet targets. And of course the Soviets are feverishly pursuing the same technology arms race, pushing all-out to greatly refine and vastly improve the capability of their arsenal finding its American targets.

Arms control as a means of reducing the numbers of nuclear weapons on both sides is an illusion of progress while both sides pursue a technological strategy that not only nullifies the significance of the mutual reduction in the number of nuclear weapons but builds far more destructive nuclear arsenals than ever.

So what is the answer? The answer is to insist on an arms control strategy that stops the technological nuclear arms race. I repeat, the technological, get that, the technological arms race. How do we do that? As any child who has taken high school physics or chemistry can tell you, you negotiate verifiable agreements to stop testing nuclear weapons. We end testing, we stop the technology race. Competent scientists and military experts assure us we can rely on a technology that can detect and accurately monitor any tests. Until we negotiate such agreements, arms control by numerical reduction is an illusion, and a terribly dangerous illusion.

MITCHELL AND COHEN, MAINE'S AND THE NATION'S STARS

Mr. PROXMIRE. Mr. President, many Wisconsin people have commented to me about the remarkable fact that two of the stars of the Senate come from one little State tucked away in the far Northeast corner of the country. Of course, they are right. GEORGE MITCHELL and BILL COHEN are two special reasons why we can take pride in this body.

On August 29 the Boston Globe carried an editorial hailing the recent Mitchell and Cohen book, "Men of Zeal." I ask unanimous consent that that editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Boston Globe, Aug. 29, 1988]

MAINE AND THE NATION

Should any proof be needed that the classiest delegation in the United States Senate—at least the classiest bipartisan delegation—is the one that represents the state of Maine, it can be found in "Men of Zeal, a candid inside story of the Iran-contra hearings."

The book's co-authors are Maine's two senators, William S. Cohen, a Republican, and George J. Mitchell, a Democrat.

Both men, products of a small state that is well out of the political mainstream but that cherishes a lively political tradition, were among the heroes of the hearings.

It was never in doubt that Cohen's loyalties were to the nation rather than to his political party; Mitchell was the man whose persistent and unflappable questioning of Oliver North finally showed him up as a self-righteous and self-indulgent impostor.

As the hearings unfolded, the initial dismay at the antics of North, John Poindexter and the other "men of zeal"—the title comes from Justice Louis Brandeis remark that "the greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning, but without understanding"—gradually abated.

There was then time to consider, and take heart from, the strengths of the American political system. It can, the hearings proved, produce—countering, and eventually overcoming, the insidious encroachments of men of zeal—men of honor and dignity who respect the nation and its liberty, and hold a dedication to serve it.

In the acknowledgments, after thanks have been expressed to editors, agents and the other people whose help is necessary to produce a book, Cohen and Mitchell "express gratitude to the people of Maine who have extended to us their patience, trust, and support, especially during this time of challenge to us and to the nation."

Maine—and the entire nation—should be grateful to Senators Cohen and Mitchell.

The ACTING PRESIDENT pro tempore. The Senator from Vermont is recognized.

ATMOSPHERIC CONTAMINATION—I

Mr. STAFFORD. Mr. President, as I near the end of 28 years of service in the U.S. Congress, including 17 in the Senate, I look back on those years with much satisfaction and gratification.

Much of that good feeling results from my membership, which began when I came to the Senate, on the Committee on Environment and Public Works, which has occupied so much of my time and energy throughout the years.

I take pride in the many environmental accomplishments that have been recorded during that period through the efforts of so many other Senators and through their willingness to let me share in those efforts. While I will retire with some regrets, those regrets are few in number.

One of those regrets, however, is that I have been unable to convince the Congress to take the steps I feel

are necessary to have our Nation lead the world in the kind of action needed to recapture the purity of our air.

Because of that regret, I ask the Senate to permit me to take a few minutes today and in the remaining days of this session of the Congress to discuss some matters of vital importance regarding the quality of our planet's air.

Mr. PROXMIRE. Mr. President, will the distinguished Senator yield for a minute for a comment? I want to congratulate my good friend from Vermont. He is certainly Mr. Environment in this body. He has done a marvelous job over the years. Again and again he has done much for the environment.

I can think of no issue more important for the American people than the environment. The Senator has led the way.

Mr. STAFFORD. Mr. President, I deeply appreciate what my friend just said, especially because of his career in the Senate and his sensitivities to environmental problems.

I refer to this subject as atmospheric contamination. Others call it by a variety of different names—acid rain, smog, global warming, and ozone depletion, to cite just a few.

Typically, these are viewed as separate and individual manifestations of air pollution, but, they are not separate.

They are connected to each other just as are the fever and chills and upset stomach of a sick child. Just as a sick child may have a variety of symptoms, so the environmental illness that now infects our planet's air is displaying itself in different, and sometimes confusing, ways.

It is one of my remaining hopes that, before this Senator leaves this Chamber for the last time, the groundwork will have been laid here that will help the United States, and the world, to respond to this threat. To counter the threat to humanity posed by atmospheric contamination will require the human race to change some of its ways. But, those changes need not require significant sacrifices.

We have accepted the changes in public health programs that have brought us the vaccines that have eradicated smallpox and conquered polio. We have adjusted to the changes required to use electricity, refrigeration, jet airplanes, and even computers without much sacrifice. Indeed, the argument can be made that we live richer and longer lives because of those changes.

If we can only recognize this circumstance for what it is—an opportunity to redirect ourselves toward a brighter future—then setting ourselves to the task ahead will be not a burden, but a joy.

We humans have degraded the environment of our world, and now we must set ourselves on the path of reversing that course. It will not be an easy task to accomplish, but it is a necessary one.

The threat is the result of the massive infusion of billions upon billions of pounds of pollutants into the air of our planet.

If humanity ever understood the role the atmosphere plays in the life of this planet, we seem to have forgotten it in recent years.

Air does not occur naturally. It was not here when the Earth was formed. The atmosphere on this planet is the product of living things. Animals, like ourselves, produce the carbon dioxide. Plants, like trees, produce the oxygen.

Once present on the planet, the atmosphere traps heat, allowing life to continue and to evolve. The atmosphere also screens out the radiation of the Sun, which otherwise would literally incinerate every living thing it touched. The air is also a nutrient, like the food on our table. We take our food one bite at a time. We take our air one breath at a time. They sustain our lives.

But, poison either and our lives are threatened.

Clearly, we have allowed pollution to poison our air in many ways. The result has been that trees, fish, and human beings have been caused to fall ill and die.

Pollution has also altered the ability of the atmosphere to allow just the right amounts of life-sustaining heat from the Sun to enter and to leave our environment. As a consequence, the Earth is becoming hotter, which threatens to cause shifts in climate that will alter life on this globe.

At the same time, manmade chemicals have thinned the ozone shield that protects us from the ultraviolet radiation from the Sun.

And, of course, we are more familiar with the various forms of air pollution closer to the ground—the pollution that irritates our eyes and our lungs and that threatens our health more directly.

Tomorrow, I will present to this body a more detailed outline of the unfinished air pollution agenda that must be addressed in the immediate future.

I propose not only to set down the challenges we face, but also to offer some solutions. It is not too late to correct our errors of the past.

Mr. President, I yield the floor.

RECOGNITION OF THE REPUBLICAN LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

COMMENDATION OF ROBERT T. STAFFORD

Mr. DOLE. Mr. President, first I commend and congratulate the distinguished Senator from Vermont for his leadership. He indicated much has been done and needs to be done on environmental issues. Certainly he has been the point man, so to speak, in this body, along with other of our colleagues. But I think everyone will agree Senator STAFFORD has provided the real leadership on some of the major issues. I commend him for that and look forward to hearing his report tomorrow morning and the following morning.

BICENTENNIAL MINUTE

OTOBER 19, 1943: FIRST WOMAN PRESIDES OVER SENATE

Mr. DOLE. Mr. President, on October 19, 1943, 45 years ago, Senator Hattie Caraway, a Democrat from Arkansas, approached the Presiding Officer's chair, took her seat, and made history. When she assumed the chair, in the absence of Vice President Henry Wallace and the President pro tempore, Senator Carter Glass of Virginia, Mrs. Caraway became the first woman to preside over this body.

Senator Caraway holds other important Senate distinctions as well. She was the first woman ever elected to the Senate, and the first to chair a committee. How she arrived at these historic firsts was due to an unlikely twist of fate, all the more ironic because of her traditional background and beliefs. The first elected woman Senator was not a feminist. As a Senate wife, spouse of Arkansas Senator Thaddeus Caraway, she had adhered closely to the belief that a woman's place was in the home and she rarely made public appearances.

When the Governor of Arkansas suggested Mrs. Caraway as a compromise candidate to fill the vacancy created by her husband's death in 1931, he never dreamed that she would decide to run for a full term in the regular election the next year. In fact, she had promised him she would not. However, Mrs. Caraway had enjoyed her brief taste of power and wished to continue. She won in 1932 with a vote that equaled the combined total of her six opponents, and she won reelection in 1938.

In her two terms in the Senate, Mrs. Caraway served on the Agriculture and Forestry, and Commerce Committees. She exhibited strong interest in farm relief, flood control, and commercial aviation safety. In 1944, Mrs. Caraway was defeated in her bid for a third full term by J. William Fulbright.

Mr. President, I reserve the remainder of my time.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. The Senate is conducting morning business for a period not to extend beyond 3:30 p.m. and Senators are permitted to speak for 5 minutes each.

Mr. REID addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

PRAISE FOR BICENTENNIAL MINUTE

Mr. REID. Mr. President, prior to the distinguished Republican leader leaving the Chamber, I would like to take this opportunity to tell him how much I have enjoyed his 1 minute vignettes on historical matters. Being an old historian myself, at least I think I am, I look forward each day to these.

I think the manner in which the topics are chosen is exciting, the research done in coming up with the anecdotes, and the general factual material that you give us is exciting and will go down in history, I am sure, as something that the Senate will treasure for years to come.

Mr. DOLE. I thank my colleague from Nevada.

BITING THE BULLET

Mr. REID. Mr. President, in my part of the country we have a common saying that we use when things become difficult or unpleasant. We call it biting the bullet. While people from all parts of the country now use this phrase, I doubt if many outside the West understand the origin of the phrase "biting the bullet."

In the old days of the West before frontier doctors had access to anesthesia, patients who were in pain were urged to bite on a bullet consisting of soft lead to help them bear the pain while immediate medical treatment was being accomplished. I believe it is time for the Congress and the administration to bite the bullet on Federal budget deficits.

According to the Office of Management and Budget's initial sequester report issued this past August 25, we may have gotten lucky enough to avoid a sequester for fiscal year 1989 spending.

Under the budget agreement reached last fall, the deficit target for fiscal year 1989 was set at $136 billion. With the $10 billion cushion permitted under Gramm-Rudman, there will be no sequester required as long as spending does not exceed $146 billion. The Office of Management and Budget now predicts a 1989 deficit of $145.3 billion so we may be a squeak or two under the limit.

Before we spend too much time patting ourselves on the back over avoiding a sequester, we should take note of the financial markets. They are not very impressed. They see that we continue to be unable to reduce the Government's budget deficit below $150 billion.

We have not seen a budget deficit below $150 billion for 7 years and the results are beginning to show in the economy. The prime interest rate is back up to double-digit figures. Increasing interest rates are already dampening the housing market, as indicated by the figures we received this month, and may well start affecting the rest of our economy in the very near future.

As I heard it said in this Chamber once so well, Mr. President, by the senior Senator from Arkansas, anybody can spend and have a good time if they are using a credit card. That is basically what we have been doing in this country the past 7 years. We have been having our pleasures, buying anything we wanted, but we have been doing it with a credit card. It is time, as I said, Mr. President, to bite the bullet. The budget reforms so greatly touted in 1974 are broken and cannot do the job of ending the Government's deficit spending binge. Our meager success this year only came about as a result of an emergency ad hoc budget summit, not through the normal budget process.

We must turn to stronger medicine to reduce our budget deficits than that contained in the current budget process. It was this realization that led me this past April to introduce the Spending Control and Programs Evaluation Act of 1988. The essence of this legislation is to force Congress to reexamine spending programs on a regular and systematic basis and specifically reauthorize such spending as it deems justified. This would put an end to automatic spending by eliminating any spending that Congress did not specifically authorize. There are adequate safeguards built in so that a minority cannot kill previously authorized programs by delaying tactics.

I knew when I introduced this bill earlier this year that there would not likely be time in this Congress for full consideration of this idea. However, I wanted to get it on the table for Senators to begin considering, and today I want to make it clear that I intend to begin pushing hard for this proposal in the early days of the 101st Congress. I encourage my colleagues to start looking into this idea. The congressional budget process is simply not doing the job. We need a new approach, and I am convinced that the only way that we are ever going to really get spending under control is to bite the bullet and start setting real priorities for spending. That can be best accomplished by requiring periodic evaluation and reauthorization for every program in the Federal budget.

RADON

Mr. BURDICK. Mr. President, the Environmental Protection Agency has just released new information about the serious health threats posed to millions of Americans by exposure to radon.

Radon is a naturally occurring gas. It can build up inside homes and other structures and can cause lung cancer.

The EPA estimates that up to 20,000 Americans each year die of lung cancer, attributable to radon.

For the past year, EPA has been working with several States, including my home State of North Dakota, to determine the extent of the radon problem.

About 1 in 3 of the homes tested in 7 States has radon above EPA's recommended action level. Some 200,000 homes in these States have very high radon levels needing immediate response.

In North Dakota, 63 percent of all homes surveyed have radon levels above the EPA recommended action level.

EPA indicates that the State is a radon "hot spot" similar to the area on the Pennsylvanian/New Jersey border called the Prong.

While North Dakota takes pride in being first among the States in many things, being first in radon is not a distinction we want to have for long.

The State is already working with homeowners to understand and assess the radon problem.

It is essential that the Federal Government assist and support radon programs in North Dakota and other States.

The Environment and Public Works Committee, which I chair, has been working on the radon problem for several years.

I held a hearing of the committee in Fargo last year to learn more about the radon problem in North Dakota. Witnesses described the radon problem in the State and offered valuable comments and suggestions.

We developed legislation in the Environment Committee to assist States in responding to radon contamination. The Senate passed the bill last year and it was recently reported out of the House Energy and Commerce Committee. Passage in the House is expected shortly.

The bill would provide $10 million a year for grants to States to develop radon programs. Grants could be used to set up response programs, to train staff, to buy needed equipment, and to purchase radon measurement devices.

The bill would expand the program for testing the proficiency of private firms engaged in radon measurement and mitigation. It also directs the EPA to assess the radon problem in our Nation's schools.

I urged my colleagues in the House to consider and approve this legislation as soon as possible.

Evidence of the serious health threats posed by radon is mounting each day. We need to assure that we have the best possible response program.

I look forward to working with my colleagues to assure final passage of radon legislation in the near future.

I thank the Chair.

EXTENSION OF MORNING BUSINESS

Mr. GORE addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee is advised that there are only about 2 or 3 minutes remaining for morning business. Does the Senator want to ask for an extension of time as he rises for the purpose of speaking in morning business?

Mr. GORE. I ask unanimous consent, if it is appropriate to do so, that the period for morning business be extended by 5 minutes.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, that is the order.

The Senator from Tennessee.

Mr. GORE. I thank the Chair.

IRAQ'S USE OF CHEMICAL WEAPONS

Mr. GORE. Mr. President, according to extensive and apparently well-documented reports, the Government of Iraq may right now be in the midst of trying to impose a final solution on its Kurdish population. Upward of 100,000 Kurds have already fled the Iraqi Army by crossing over the border into Turkey. Something on the order of 50,000 Kurds remain trapped inside a forbidden zone said to have been marked by the Government of Iraq for depopulation. These people are now the object of a military program, which, according to many reports, includes the use of chemical weapons.

If the world does not respond to these developments, we may again be forced to look on as yet another act of mass atrocity is committed by yet another government whose behavior will yet again stain the honor of humanity and of civilization. At such times, there can be no such thing as innocent bystanders. For governments to have knowledge of such events, and not to cry out, is to become complicit with them.

Last week, the United States finally broke the silence, cynicism and indifference which, until then, typified the world's response to repeated charges of inhumane behavior by Iraqi forces, involving the use of chemical weapons. The Secretary of State—convinced by information at his disposal—bluntly laid it on the line for Iraq. Thanks to Senator PELL, the Senate did likewise, by approving legislation aimed at cutting off United States aid to Iraq, and ending United States imports of Iraqi oil.

It is a beginning, but it is not enough. To achieve results, we should focus world opinion on a demand that Iraq desist from the use of chemical weapons; that it allow international inspection to followup on claims that chemical weapons have been used; and that it conform its behavior toward the Kurdish population within its borders to norms acceptable under the U.N. Charter and international law.

To that end, Mr. President, there are certain actions I urgently recommend:

First, our Government should immediately issue a statement which presents the evidence against Iraq in the fullest possible detail.

Second, we should request an immediate session of the Security Council to address the charge that Iraq is in the process of carrying out a genocidal policy.

Third, we should call upon our allies, some of whom are deeply involved with Iraq as trading partners and/or military suppliers, to demand that Iraq be responsive to these charges.

Fourth, we should directly confront the nations of the neutral-nonaligned movement with their silence in the face of the evidence and demand that they speak out.

Fifth, we should ask the Soviet Union to speak out in the same manner as have we. Parallel United States and Soviet approaches will do more than anything else to signal Iraq's leaders that they must change course.

Sixth, we should communicate with every nation that is a party to the Geneva Protocol on the Prohibition of the Use of Chemical Weapons, to advise that silence in the presence of such a challenge to this agreement will make it a dead letter.

Seventh, we should move speedily to determine the needs of Kurdish refugees in Turkey, and of agencies seeking to aid them, including both the United Nations and the Government of Turkey itself. We should make sure that these needs are met.

To promote these actions, Mr. President, there are certain steps which we in this body can take.

First, the Senate should call upon the Secretary of State to provide public testimony as to the nature of information at his disposal, and as to the administration's ongoing plans.

Second, I suggest that both parties through their leaders consider setting up a clearinghouse process to collect and analyze information on behalf of the Senate as a whole.

Third, we can communicate with the Turkish Government through its ambassador here, to express appreciation for what it has done so far to provide refuge for Kurdish refugees, and to indicate that the Senate is ready to respond to their material needs for our part in this process.

Fourth, we can communicate with the Soviet Government through its ambassador here, urging them to join the United States in public condemnation of Iraqi behavior.

Fifth, we can and should communicate with governments of Iraq's trading partners, suppliers, and supporters; appealing to them to speak out and to use their influence.

Sixth, we can and should make sure that the American people are alerted to what is going on. To this end, we can use not only our own resources, but we ought to ask the two Presidential candidates to speak out.

Mr. President, ruthless as it may be, the Government of Iraq is not irrational. Its leaders are aware of world opinion, and understand that their vital interests can be damaged by a hardening of that opinion against them. Recognizing this, we can influence the outcome of these events. But only if we shake world opinion awake.

I yield the remainder of my time.

EXTENSION OF MORNING BUSINESS

Mr. BYRD addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

Mr. BYRD. Mr. President, I ask unanimous consent that there be an extension of the time for morning business for 10 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

PROPOSED UNANIMOUS-CONSENT REQUEST

Mr. WEICKER addressed the Chair.

The ACTING PRESIDENT pro tempore. Has the majority leader yielded the floor.

Mr. BYRD. Mr. President, I yield to the distinguished Senator.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. WEICKER. Mr. President, I would like to address, if I could, a few questions to my good friend, the distinguished majority leader. I have before me a proposed unanimous-consent request relative to the Labor, Health and Human Services conference report. I agree with everything contained therein. The only question that I have is, if I agree to the procedure that we are going to have a motion, to insist that also I be permitted by those on the other side, if I fail, to have the opportunity to make a motion to recede.

Having said that, I think I would certainly not want to be tabled in my motion any more than I think the

motion to recede should be tabled. Let us have a motion to insist, and a motion to recede; and up-and-down votes.

That is my only inquiry of the distinguished majority leader as to why we cannot have that procedure followed where we choose to have our day in court. We cannot agree all the time. But I agree to the motions, and I just want to make sure that I have a full presentation of my side of the issue. I want to also guarantee that the others on the other side have a full presentation of their point of view.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. EVANS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

The Senator from Washington.

Mr. EVANS. Mr. President, I ask unanimous consent that I may proceed for 5 minutes as if in morning business.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, the Senator from Washington is recognized for 5 minutes.

STEWART BLEDSOE

Mr. EVANS. Mr. President, last weekend I returned to the State of Washington to celebrate the life and to mourn the death of a remarkable man and dear friend.

His name was not known nationally, but remembering his life may well help us in the future to resolve our increasingly bitter environmental conflicts.

Stewart Bledsoe was a football player, naval aviator, cattle rancher, and a politician of consummate skill. I first met him almost 30 years ago when he decided that it was not enough to complain about Government, but it was imperative to take an active part.

He ran for the Washington State House of Representatives and came to the Republican caucus in the mid-1960's as a surprise addition—the first Republican elected in that district in years and years. It did not take long for all of us to listen when he spoke, for he cut through the complexities of issues and personalities with what became famous as "Bledsoe-isms."

He used to speak of somebody going fast by saying he was at "Mach 2 with his hair on fire."

He used to talk about someone who was tired out in what only a horseman could say: "He was rode hard and put away wet."

Some of his "Bledsoe-isms" were much earthier than that and probably cannot be repeated on the Senate floor, but all of them helped us learn, and they added joy to our understanding.

He quickly rose to leadership in the legislature, and when I had an opportunity, I was quick to appoint him as director of the Washington State Department of Agriculture. He served in a distinguished fashion there, expanding markedly Washington's markets overseas acting as a good will representative across the Pacific and a fine administrator in the State of Washington.

When our administration ended, Stu helped initiate and then led the Washington Forest Protective Association. Although that organization represented timber operators, Stu recognized that competing interests in the use of forests somehow had to be reconciled.

Perhaps his most lasting legacy will be the timber, fish, and wildlife process, which brought together one-time combatants to resolve environmental challenges in the management of our forest economy. State and Federal fisheries agencies, Indian tribes, environmentalists, timber managers, and other governmental representatives joined in taking these contentious issues out of the courtroom and into cooperative management.

The year before this organization was established, there were more than 20 lawsuits filed in Washington State courts on the management of fisheries and timber and their conflicts. A year after the organization was started, there were no lawsuits filed. This concept of reconciliation rather than retribution is spreading nationally; and through its success, Stu Bledsoe's influence still lives.

His professional career was only a small part of his extraordinary life. Stu was a middle-aged motorcyclist careening down Washington's back roads with the joy of that speed, just as he lived life—right at the edge. He was a fanatic sailor who roared with joy. I was with him on more than one occasion when he would haul his catamaran alongside a power boat and dare them to a flat-out race and then beat the socks off them.

His real passion, however, was his family—Betsy, his wife and partner of 45 years, and their two sons and two daughters and a growing number of grandchildren. He loved them all, separately and collectively.

Last Saturday was a remarkable occasion, for it was a family service—a family service at which each of the four children of the Bledsoes spoke. Laughter brushed away our tears, as we rejoiced in his life much more than sorrowed at this early death. Pride, respect, and comradship in each of their comments made us all realize that Stu lives through them.

Each of us is blessed with many acquaintances and with hundreds of friends. Only a handful qualify as best friends. I lost a best friend last week. But how glad I am that I was privileged to share part of his life for the past 30 years!

Mr. President, I ask unanimous consent to have printed in the RECORD an article on Stewart Bledsoe which appeared in the Seattle Times of Wednesday, September 7.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

STU BLEDSOE: A TOUCH OF HOMESPUN CLASS

(By Richard W. Larsen)

Stu Bledsoe was that rare character on the public scene who added a great dash of zest, color and focus to many of the complex, often-gray "big issues" that rolled through an era of Washington politics.

Herb Robinson, top-dog editor of this page, remembers the first time he met Bledsoe. "It must have been in the 1950s. I was working for KOMO-TV, and I was trying to organize a debate on the economic issues of the state."

The Republicans recommended Bledsoe—"a young guy from Ellensburg who was a rancher. He'd speak from agriculture's point of view."

Robinson remembers the moment Bledsoe arrived at the curb in front of the KOMO studios: "He pulled up in something like a white Lincoln or Cadillac. He was wearing this big cowboy hat and boots and an expensive suit."

Robinson blinked at the sight, then received Bledsoe's great grin and "Howdy." It turned out the cowboy knew his stuff, and from that moment on, through ensuing decades, Robinson says, "I discovered that underneath all the glitter, there was this very real guy."

Back home in Kittitas County and elsewhere around central Washington, neighbors came to admire the onetime fighter pilot out of Los Angeles who, they discovered, knew how to operate a cattle ranch. At his Flying B spread, Bledsoe did some impressive new things such as selective breeding to improve herd quality. In 1965 he was elected to the Legislature.

In the House, Bledsoe became the colorful Republican Majority Leader who, with cowboy style and bunkhouse wit, often served as "trail boss" for the programs of Gov. Dan Evans and the GOP. When votes were needed on a bill, Bledsoe called on the band of loyalists to "saddle up and round up the strays."

On a tough, close vote, he exhorted everyone to "Circle the wagons!" and ignore the speeches of critics ("the rattle of small-arms fire"). Solid things, both conservative and progressive, happened in education, environmental protection, and other areas of state policy.

Even his opponents liked Bledsoe. Democrats enjoyed the verbal shootouts, though they usually were no match for Bledsoe's quick draw and rapid fire. Once they slyly prepared an ambush when Bledsoe was moving to bring a tax bill onto the floor. It was a measure that would exempt certain agricultural products from the state sales tax, including—of all things—semen for the artificial insemination of cattle.

A dozen or more raucous, offcolor speeches were readied to needle and embarrass

Bledsoe—on issues such as cruelty to bulls. But, remembers Bledsoe's seat mate, Sid Morrison, "at the moment the bill came up, a group of nuns filed into the visitor gallery and sat down." Democrats swallowed their speeches. The bill passed quickly, quietly.

"Stu had Divine Providence on his side," Morrison reflects.

In the early 1970s Bledsoe ran for Congress in the 4th District. Probably there wasn't time for folks in that sprawling district, especially around Vancouver, to fully fathom the remarkable brain and abilities behind the corral-fence, shucks-and-golly exterior. Bledsoe lost to incumbent Mike McCormack.

Later, though, Bledsoe helped Republican Morrison win that seat. "Stu would have made a spectacular congressman," Morrison reflects. True. But based in Olympia, Bledsoe ran the state Agriculture Department for four years and did other important policy things.

In 1977 Bledsoe turned up as executive director of the Washington Forest Protective Association, an organization mostly made up of the big timber companies—Weyerhaeuser, Simpson, and others. At the time, Washington's woods were full of warring factions. Environmentalists, Indian tribes, small timber-lot operators, the industry giants, sportsmen, farmers and others were often locked in disputes over tree harvest and land- and water-management practices.

"Stu's enthusiasm was his hallmark," says Bob Austin, a long-time associate. "He always figured a way to win, saying there's no such thing as losing. If we can't win, we figure out a way we can."

Bledsoe helped nudge everyone into understanding the goals they had in common. It was the crucible in which there began to form TFW, the Timber-Fish-Wildlife agreement. I remember the early meetings, with longtime political enemies all sitting around the table, at which Bledsoe argued persuasively that "everyone has a chance for a win-win situation here."

It turned out that way. There emerged historic agreements on timber-harvest methods that promise to give lasting protection to land, streams and wildlife across the state. Washington's TFW is being copied by other states. Under Bledsoe's herding, this State's big timber corporations came to be respected neighbors instead of hated ogres.

Last year, at a retreat of directors of the forest group, Bledsoe was honored on his 64th birthday. His admirers introduced a game of charades based on all the folksy "Bledsoe-isms." There was plenty of material, like:

Bledsoe, putting himself down after a major accomplishment: "Even a blind hog finds an acorn once in awhile." And, "No use being dumb if you can't show it."

On someone who'd had a tough day: "He looks like he was rode hard and put away wet."

Referring to Boeing, when it tended to be politically pompous: "The kite factory down the road."

On his silver years: "Too old for a paper route, too young for Social Security, and too tired for an affair."

In fact, Bledsoe had a 45-year love affair with his wife, Betsy. In recent weeks he's been battling a spreading cancer. An unusual operation wasn't able to check it. Bledsoe died early yesterday.

There has been a stampede of tributes. "Stu was an experience," said longtime associate Austin.

There was no one like him. Congressman Morrison mourned him but concluded, "Somebody must have had a need for him somewhere else."

Or, put another way, there was a need for a top hand to ride on a higher trail.

TIME LIMITATION AGREEMENT—CONFERENCE REPORT—H.R. 4783

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate considers the conference report on the Labor-HHS appropriations bill it be considered under the following time limitation:

Ten minutes on the conference report to be equally divided between Mr. CHILES and Mr. WEICKER and 10 minutes on the conference report for Senator HATCH;

Provided, further, that all amendments in disagreement be considered en bloc with the exception of the amendment in disagreement dealing with abortion;

Provided, further, that there be 2 hours equally divided between Mr. WEICKER and Mr. HELMS on a Weicker motion to insist on the Senate amendment No. 126 with respect to the abortion amendment in disagreement and that there be 15 minutes for Mr. EXON on the motion by Mr. WEICKER;

Provided, further, that no other amendments or motions be in order other than a possible motion to recede from the Senate abortion position should the Weicker motion be tabled or defeated on which there shall be 10 minutes to be equally divided between Mr. CHILES and Mr. WEICKER.

The ACTING PRESIDENT pro tempore. Is there objection to the request of the majority leader?

Mr. CHILES. Mr. President, reserving the right to object, nothing in there precludes a tabling motion, does it?

Mr. BYRD. No.

The ACTING PRESIDENT pro tempore. The Senator from North Carolina.

Mr. HELMS. Reserving the right to object. The time requested by the distinguished Senator from Florida was not mentioned, was it? Is there 15 minutes for him?

Mr. BYRD. No, there is not.

Mr. HELMS. So that would be included in the time allotted to me?

Mr. WEICKER. Well, I will also give him time.

Mr. HELMS. Mr. President, we are not going to have any difficulty about working out the time.

Mr. BYRD. So Mr. CHILES would be assured of 15 minutes overall?

Mr. WEICKER. Absolutely.

Mr. HELMS. I can assure that, one way or the other, the Senator from Florida will have adequate time to discuss it. I do not object.

The ACTING PRESIDENT pro tempore. The Senator from North Carolina does not object.

Is there objection? Without objection, the unanimous-consent request of the majority leader is agreed to.

Mr. BYRD. Mr. President, I thank Mr. WEICKER, Mr. HELMS, and Mr. CHILES. I thank the Republican leader and all other Senators.

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS, FISCAL YEAR 1989—CONFERENCE REPORT

Mr. CHILES. Mr. President, I submit a report of the committee of conference on H.R. 4783 and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The report will be stated.

The bill clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4783) making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1989, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The ACTING PRESIDENT pro tempore. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of August 11, 1988.)

Mr. CHILES. Mr. President, the conference agreement is within the final 302B allocation ceilings. The conference agreement totals are at the discretionary outlay ceiling of $44.877 billion, and we are $264 million under the discretionary budget authority ceiling of $39.587 billion. To bring these totals into conformance with the 302B ceilings we were required to make a 1.2-percent across-the-board cut as our final action in conference.

On an overall basis, the Senate passed bill totaled $140,429,241,000. The conference agreement that we have brought back is $55.1 million, or 0.04 percent, below the Senate bill. In other words, we feel we have sustained, in a very substantial way, the position of the Senate in this bill.

We have also been able to maintain most of the special items of interest to the Senate and the various Members.

Mr. President, I ask unanimous consent to submit highlights of the conference agreement for the RECORD at this point.

There being no objection, the highlights were ordered to be printed in the RECORD, as follows:

HIGHLIGHTS OF THE CONFERENCE AGREEMENT

For AIDS, the conference total is $1.2 billion, slightly below—$20.8 million below—

the Senate passed figure, due primarily to the 1.2-percent across-the-board cut.

For the Social Security Administration, we were able to retain an increase of 1,000 positions over the President's request.

The conference agreement provides an 8-percent increase for biomedical research at the National Institutes of Health [NIH], and the Alcohol, Drug Abuse, and Mental Health Administration [ADAMHA]; a 9-percent increase for the health promotion activities of the Public Health Service; and all the drug programs—drug abuse research, drug education, and drug treatment—are increased 15.2 percent. The conference agreement for these several programs is essentially at the Senate level, but for the 1.2-percent across-the-board cut.

The conference agreement provides over $78 million for programs for the homeless, including primary and mental health care, job training, and education. This total is almost 18 percent above 1988 levels.

The Senate funding levels have been maintained—except for the across-the-board reduction—on all major mental health and substance abuse programs. Mental health research will see a 16-percent increase over 1988; the substance abuse block grant is increased by $22 million; substance abuse research will go up by 15 percent.

Our commitment to education for the handicapped is maintained, with almost a $100 million increase for these programs over 1988 levels, including a 23-percent hike in funding for preschool grants.

Chapter I compensatory education programs for the disadvantaged are funded at $4,570,246,000, or just slightly less—$19.5 million less—than the Senate passed level. This is over $240 million more than the fiscal year 1988 level.

Student financial assistance programs total $5,814,056,000—just slightly less than the Senate passed levels.

The trio programs, which help disadvantaged students acquire the skills to gain admission to college and to graduate school, are slated for a $13 million increase.

Last year's infant mortality initiative is continued, and the conference agreement adds $14.7 million to expand that initiative. These add-ons will fund additional doctors and nurses for our system of community health care centers and provide them with malpractice insurance.

The conference agreement provides $554.3 million for the maternal and child health block grant, and $142 million for the Childhood Immunization Program, representing very small reductions to the Senate passed levels for these two important programs.

For the job training programs, the conference agreement of $3,785,687,000 is only $31,499,000 below the Senate passed level, and includes sufficient funds for opening six new Job Corps centers. Also included is $343,824,000 for older workers jobs programs; although this is less than the original Senate recommendation, it will still allow expansion of existing services.

The conference agreement retains most of the Senate increase for refugee and entrant assistance, and for the Head Start Program, we were able to provide $1,235,000,000—an increase of $28,676,000 over fiscal year 1988.

Mr. CHILES. Mr. President, as the Members know, the House has insisted on its position regarding Medicaid funding of abortions by a 50-vote margin. The House has insisted on maintaining current law permitting Medicaid funding for abortions only in those cases in which the life of the mother would be endangered if the fetus were carried to term. This is an item in disagreement. The first order of business, however, is the conference report which is not controversial and I hope we can adopt with a voice vote.

Mr. President, before we move to adopt the conference report, I would like to express my appreciation to Senator WEICKER, the ranking member of this subcommittee, for his leadership and cooperation. He has provided important advice on AIDS and many other critical issues, especially all those issues involving the handicapped and education. His familiarity and experience with this bill have been very helpful to us. I yield to Senator WEICKER for any opening statement that he might wish to make at this time.

Mr. WEICKER. Mr. President, first, I commend my colleague, Senator CHILES, for his handling of the Labor, Health and Human Services appropriation bill. I think he has done an outstanding job under very difficult circumstances—circumstances that, simply put, mean too little money for education, too little money for health, and too little money for the concerns of labor. But all of this was arrived at in a leadership budget agreement between the White House and the Congress—an agreement I might add, which included the leadership of both the Democrats and the Republicans. As a result, Mr. President, a good portion of the ball game was decided before it even came to our committee.

Within those parameters, I believe LAWTON CHILES has been eminently fair in allocating those minimal resources to the areas covered by the jurisdiction of his committee.

Mr. President, I hope that in the new Congress, the American people will have spoken; that health care and the education of our children, and safety in the workplace will be the matters of prime importance to the Nation. I hope that defense spending will not be exempt from the budget process. Defense can no longer occupy the position which it does to the exclusion of all the other elements that contribute to the quality of life here in the United States.

Senator CHILES is leaving the Senate this year. I cannot think of a finer note to go out on than this conference report which reflects his contribution to the education and health concerns of our citizens.

Mr. President, as far as the Labor-HHS bill is concerned it is not a question of Senator CHILES' agenda on the Democratic side or Senator WEICKER'S agenda on the Republican side, but what is the agenda of the United States of America to be? So far in the political debate between both sides all I hear is who is patriotic and who is not. I do not hear them talking health. I do not hear them talking science, I do not hear them talking education. Unless these things are discussed now, believe me, when we come to the next session of Congress, everything will be the same. And the same is not all right.

The efforts of the Senator from Florida are magnificent, but the result was predestined, to a great extent. And the result should be different. I might add, when I was chairman, I suffered under the same budgetary constraints. The result has to be different if, indeed, the health of our children, the education of our children, are to take turns for the better.

The word "children" to me is synonymous with the future. If the money is not there on their behalf, the future is not going to be there for any of us.

I hope that the conference report will be adopted without debate, because it is a fine piece of work. I hope it will be adopted by voice vote. We have cleared adoption of the report, I might add, with Senator HATCH and all Members on this side.

Mr. President, before I yield the floor, there is report language included in this conference agreement that I think deserves some commentary. We have a problem. Many of my colleagues have read about it in the press, and this problem is fast coming upon us. It has a September 30 deadline and something needs to be done.

Sometime before the end of this month, we have to face up to the fact that 6,000 Americans are going to die unless Congress acts. These are the Americans who at the present time receive the drug AZT because of the availability of Federal funds. They are Americans who are unable to pay for the drug out of their own pockets.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. WEICKER. I ask unanimous consent for an additional 4 minutes.

The PRESIDING OFFICER. Without objection, an additional 4 minutes is allocated the Senator from Connecticut.

Mr. WEICKER. These are Americans who have been the beneficiary of Federal funds appropriated over a year ago to ensure that those who needed AZT would receive it even if they could not afford to pay for it. These funds expire on September 30. There are no Federal moneys to continue it. Likewise, in many of the States, there are no State or local moneys to continue it. Indeed, there are other situations where the individual would have to spend down to the poverty level to make themselves Medicaid eligible in order to pay for the drug. There are many ramifications to the problem, but the worst is that if the drug is not received, the person dies.

I intend on this floor through some piece of legislation to introduce authorizing language to keep the present program going for an additional 6 months. I do not intend for this to be an entitlement program, but we are in no position right now with a deadline facing us, being in the middle of an election year, to decide such an issue of life and death. We need 6 months' breathing space. This will at least assure those individuals whose lives are being prolonged at the present time that during the recess they will not die. And that is not an overexaggeration. That is a simple statement of fact.

Mr. President, there are those who feel that part of the problem is that the price of AZT is too high. I have been in communication with the Burroughs Wellcome Co. which manufactures the drug, and I hope discussions would be advanced in the direction of making this treatment more available in terms of cost to the people it serves. And obviously, nothing can be achieved without the agreement of the Secretary of Health and Human Services. The Secretary has been unavailable for the last several weeks but I understand he will be back in Washington in the next few days, and I hope we can sit down and talk about how to take care of this problem.

I understand all the arguments this raises. If we can do this for those who suffer from AIDS, why not for some other disease? In fact, as many of my colleagues know, we have an ongoing program where the Federal Government does pay for kidney dialysis. If for kidney dialysis, why not for AIDS? Mr. President, all I know is there are many here who are trying to fight a fire now, and I really do not believe we can afford to get into a prolonged debate, a debate which can only lead to the deaths of an inordinate number of our neighbors.

I wanted to use the few minutes allotted to me for my opening statements, not on the conference report or the good work of the distinguished Senator from Florida. It is a good conference report and he did a good job, but I wanted to use my time to talk about the AZT problem. It is mentioned in the conference report but I wanted to highlight it here again. We will have a chance to debate the authorizing language I intend to offer and all aspects of it. It should be debated but, most important, we should make a decision, no later than September 30. If we pass the authorizing language, then we can fund the program in a continuing resolution or by administrative means in the Department of Health and Human Services.

I alert my colleagues to the problem and the Nation to the problem because, believe me, nobody in good conscience gets out of this place until these 6,000 have been cared for.

I thank the Chair.

JOB CORPS PROGRAM: FUNDING FOR NEW CENTERS

Mr. DOLE. Mr. President, the fiscal year 1989 Labor-HHS-Education conference report contains $36 million in funding for the acquisition, rehabilitation, and construction of six new Job Corps centers. These funds are intended to be targeted on States that do not already have Job Corps centers.

Funding for new Job Corps centers has been on hold for the past few years because of budget constraints. The Department of Labor has needed most of the available funds to cover maintenance and repairs of existing centers, and there were no funds left over to create new centers.

JOB CORPS CENTER FOR KANSAS

My distinguished colleague in the Senate, NANCY KASSEBAUM, and I have reminded Secretary of Labor Ann McLaughlin that a new Job Corps center for Kansas is still a top priority. We believe any new Labor Department funding included in this bill should go to finance a center in Kansas. It is one of only six States that do not currently have a center, and Congress has clearly indicated its intent that new centers be located in States that have been left out in the past.

Our interest in this issue began back in 1982 when we began a campaign to bring Kansas into the National Job Training Program. We saw results when, in 1984, Secretary of Labor Ray Donovan telephoned me to say that Kansas was in line to receive its first Job Corps center. With this news, we then established a 12-member site selection committee to make certain that the State selection process was fair, independent of politics, and subject to statewide competition. The result of this process was that Manhattan, KS, was selected as an ideal site. I believe this site is an excellent location, and it remains available. In fact, it can be purchased at a significantly reduced price as compared with the 1984 bid. When Bill Brock took over as Labor Secretary, we reiterated our interest in this project, and he was in agreement that this was a top priority.

CAPACITY OF NEW CENTER

According to past indicators, Kansas should produce more than enough students to keep 300 slots in a job center filled to capacity with trainees. Under the current situation, Kansas sends its Job Corps students to centers in other States, including Utah, Missouri, and Kentucky. Having a center in Kansas would allow these students to be served in closer proximity to their home environments.

Mr. President, community support for a Job Corps center in Manhattan continues to be at an all-time high. The program has an outstanding track record in training disadvantaged young people, and it is my hope that the Manhattan community will soon be able to participate in this very worthwhile program.

Mr. SASSER. Mr. President, I rise to call the attention of my Senate colleagues to the $225 million allotted to the National Institute on Aging in the conference report to accompany H.R. 4783, the Labor, Health and Human Services, Education, and related agencies appropriations bill. I would like to receive assurances from subcommittee chairman CHILES that this appropriated amount includes funding for the establishment of up to two national centers for geriatric excellence and training.

Last year, I introduced a bill, S. 1112, to establish 10 centers of geriatric excellence and training over a period of 3 years. I was pleased to see language authorizing the establishment of these centers of geriatric excellence and training included in S. 2222, the reauthorization of programs funded under title IV of the Public Health Service Act. I was further pleased to note that the Labor, Health and Human Services Appropriations Subcommittee included language in the Senate report to accompany H.R. 4783 to provide for the establishment of up to two centers of geriatric education and research. Based on the economic assumptions used in preparing cost estimates for S. 1112, the cost of funding these two centers should not exceed $3 million.

Allow me to take a minute to explain why I believe that obtaining adequate funding for these centers for geriatric excellence and research is so important. Mr. President, it is my hope that these centers of excellence will fill an enormous gap in the delivery of health care services in America. This gap is the result of an absence of trained physicians having the medical background necessary to meet the special health care needs of our Nation's elderly. A recently released study by the Institute of Medicine underscores the extent of this problem. Just last year, the Institute of Medicine found that of 450,000 practicing physicians in the United States, only 450, or one in every thousand, has completed a postgraduate fellowship in geriatrics. And this is not a promising figure, particularly in view of the fact that a number of elderly Americans is expected to increase exponentially in the years to come. Indeed, this same Institute of Medicine study points out that our yearly output of geriatric specialists must double in order to meet the projected need of 2,100 geriatric specialists by the year 2000.

Mr. President, it is my hope that the establishment of centers of geriatric training and excellence will constitute an important first step in meeting the projected needs of our ever expanding elderly population. Furthermore, I

hope that additional centers of geriatric excellence and training will be established in future years.

However, Mr. President, in order to be effective in meeting the needs of our elderly population, these centers for geriatric excellence must be assured of adequate levels of financial support. I know that the Senator from Massachusetts, Mr. KENNEDY, shares my concern that these centers for geriatric excellence are funded at an adequate level, and I would like to ask him to express his concerns at this time.

Mr. KENNEDY. The Senator from Tennessee is correct. As chairman of the Committee on Labor and Human Resources, to which Mr. SASSER's original proposal, S. 1112, was referred, I have long supported the establishment of geriatric centers for excellence. I was proud to include authorizing language for these centers in S. 2222, which reauthorized programs related to the National Research Institutes of the Public Health Service. I certainly support the funding included for these centers in H.R. 4783, and I know that this concern is shared by my Republican colleague, Senator HEINZ, and I would like to ask the distinguished Senator from Pennsylvania to address this matter.

Mr. HEINZ. The Senator from Massachusetts is correct. As ranking majority member of the Senate Committee on Aging, I was an original cosponsor of Senator SASSER's S. 1112, which would have established 10 centers of geriatric excellence. In light of the aging of our society, it is imperative that we have enough trained clinical specialists to care for our elderly and counsel our entire medical cadre about the special characteristics of elderly patients. At present, there are not enough geriatricians to build a basic teaching backbone for the specialty, let alone provide substantial clinical services or consulting. It is extremely important that these new centers of excellence have a clear budget authority and a stable base of funding support if we are to meet the minimum objectives spelled out by the IOM report. I would like to take this opportunity to call upon the distinguished Senator form Florida, Mr. CHILES, to confirm his support for these new geriatric centers of excellence.

Mr. CHILES. Mr. President, as chairman of the Labor, Health, and Human Services Subcommittee of the Senate Appropriations Committee, I share the support voiced by my colleagues for the centers for geriatric excellence. I am confident that the National Institute on Aging should be able to fund up to two new centers of geriatric excellence within the appropriated level of $225 million. Moreover, I am not the only member of the subcommittee who is interested in securing adequate funding for this initiative. The distinguished Senator from Connecticut and ranking member of the subcommittee [Mr. WEICKER], has been instrumental in this matter, and I would like to call upon Mr. WEICKER to express his views on this issue.

Mr. WEICKER. Thank you, Senator CHILES. As ranking minority member on the Labor, Health, and Human Services Subcommittee of the Senate Committee on Appropriations, and as one who, over the years, has fought to ensure adequate geriatric training and research funds I have a special interest in ensuring that sufficient levels of funding are provided for these two new centers for geriatric excellence. In fact, it was at my request that the centers were included in the Senate passed bill. I assure my colleagues that I will carefully monitor the establishment of these centers by the National Institute on Aging.

DIVISION OF RESEARCH RESOURCES, NATIONAL INSTITUTES OF HEALTH

Mr. SPECTER. Mr. President, I wish to acknowledge and applaud the distinguished chairman, and the distinguished ranking member of the Labor, Health and Human Services and Education Appropriations Subcommittee for their unyielding efforts and excellent work in producing this conference report.

I believe Senator CHILES and I share a common concern of vital interest to the health care and research community: the future of the research programs and organizations currently funded through the Division of Research Resources at the National Institutes of Health designed as alternatives to using animals as research and experimental resources. Such excellent organizations as the National Disease Research Interchange and the American Type Culture Collection and programs conducted at facilities such as the MIT Cell Culture Center, the Yeast Genetic Stock Center at the University of California Berkeley and the matrix of biological knowledge pilot project at the Unisys Corp., do outstanding work with funding through the Division of Research Resources. We would not, for example, be benefiting today from the accelerated gains made in diabetes and cancer research and treatment were it not for the alternatives the Division of Research Resources has developed to animal research resources.

In light of the success rate of these existing programs and organizations, I urge that the Division of Research Resources allocate at least $10 million to enhance the current programs and organizations it currently funds, as well as new programs that are designed as alternatives to using animals as a research resource. Furthermore, I urge that of this amount, at least $3 million be allocated for the National Disease Research Interchange.

The National Disease Research Interchange is a prototype system, the only one of its kind in the world, coordinating the retrieval, processing and supplying of human tissues and organs, both healthy and diseased, to scientists throughout the United States. In our committee report, we recognize that the National Disease Research Interchange's mission is to "ensure regular access to human tissues and organs for biomedical researchers throughout the country. Breakthroughs in the treatment and cure of many diseases can be expected through the development of these alternative resources."

To date, some 35,000 tissues and organs have been retrieved, processed and delivered to over 300 researchers, 90 percent of whom are funded by the National Institutes of Health. These tissues and organs have been used in the research of over 70 diseases, including cancer, diabetes mellitus, cardiovascular disease, cystic fibrosis, glaucoma, and AIDS. Given the fact that the NIH has charged the National Disease Research Interchange with the unique mission of serving all 13 institutes of the NIH, it is more important now than ever that we ensure proper funding for this fine organization.

Mr. CHILES. I would like to thank my distinguished colleague, the Senator from Pennsylvania for his kind words. It has been an honor to serve as chairman of the Labor, Health and Human Services and Education Appropriations Subcommittee during my last term in office and to have him on my Subcommittee. I concur completely with the thrust of my colleague's statement and would like to add simply that we are on the cutting edge of medical breakthroughs with the use of biotechnologies such as magnetic resonance imaging, spectroscopic analysis, and electronic scientific bulletin boards to rapidly disseminate information on newly acquired research resources.

Mr. CHILES. Mr. President, if there is no further debate, I urge the adoption of the conference report.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the conference report.

The conference report was agreed to.

Mr. CHILES. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. WEICKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CHILES. Mr. President, I ask unanimous consent that the amendments of the House to the amendments in disagreement, except for amendment No. 126, to considered and agreed to en bloc.

Mr. President, amendment 126 is the amendment that has to do with abortion funding, and that is the amendment on which there is a unanimous-consent agreement we will take up in debate.

The PRESIDING OFFICER. Is there further discussion?

Mr. WEICKER. I beg the indulgence of the Chair. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CHILES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHILES. Mr. President, I renew my unanimous-consent request.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments of the House to the Senate amendments in disagreement were agreed to as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 8 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert: "and $36,000,000 shall be used to continue acquisition, rehabilitation, and construction of six new Job Corps centers; and, in addition, $9,500,000 is appropriated for activities authorized by title VII, subtitle C of the Stewart B. McKinney Homeless Assistance Act, of which $1,900,000 shall be for carrying out section 738 of the Act".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 10 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert "$47,870,000, in accordance with section 1424 of H.R. 4848 as passed the Senate on August 3, 1988".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 20 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert "$247,517,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 30 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert "$1,632,584,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 37 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum inserted by said amendment, insert "$993,830,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 43 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum inserted by said amendment, insert "$1,593,536,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 44 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert: "; of which at least $75,000,000 shall be available only for cancer prevention and control and $2,500,000, to remain available until expended, shall be available only for the Frederick Cancer Research Facility".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 46 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum inserted by said amendment, insert "$1,059,303,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 48 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum inserted by said amendment, insert "$132,578,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 49 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum inserted by said amendment, insert:

SEC. 200. None of the funds contained in this Act shall be used to compel any action in violation of section 401(b) and (c) of Public Law 93-45.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 51 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum inserted by said amendment, insert "$567,158,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 55 to the aforesaid bill, and concur therein with an amendment as follows: "$573,978,000 of which up to $96,100,000, as the Secretary may determine to be appropriate, shall be transferred to the National Institute on Deafness and Other Communication Disorders upon being enacted into law".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 58 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum inserted by said amendment, insert "$754,084,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 66 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum inserted by said amendment, insert "$226,168,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 72 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum inserted by said amendment, insert "$362,987,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 73 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of sum named in said amendment, insert "$5,000,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 75 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of sum inserted by said amendment, insert "$29,500,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 79 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of sum inserted by said amendment, insert "$74,626,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 80 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of sum inserted by said amendment, insert "$73,078,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 82 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of sum inserted by said amendment, insert "$39,000,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 85 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of sum inserted by said amendment, insert "and the Protection and Advocacy for Mentally Ill Individuals Act of 1986, $1,581,691,000 of which $4,787,000 shall be available, on a pro rata basis, for grants to the States for State comprehensive mental health services plans pursuant to title V of Public Law 99-660 (100 Stat. 3794-3797),".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 88 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of sum inserted by said amendment, insert "$70,167,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 100 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert ": *Provided further,* That not to exceed $170,000,000 shall be available for automatic data processing and telecommunication activities".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 104 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of sum inserted by said amendment, insert "$387,000,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 106 to the aforesaid bill, and concur therein with an amendment as follows: Strike out the matter stricken by said amendment, and insert "and the Stewart B. McKenney Homeless Assistance Act, $382,185,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 118 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum inserted by said amendment, insert "$2,574,808,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 130 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the section designation in said amendment, insert "216".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 134 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the section designation in said amendment, insert "218".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 137 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the section designation in said amendment, insert "219".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 152 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the section designation in said amendment, insert "$9,000,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 153 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the section designation in said amendment, insert "$717,000,000".

Resolved, That the House recede from its disagreement to the amendment of the

Senate numbered 155 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the section designation in said amendment, insert "$702,000,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 157 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the section designation in said amendment, insert: ": *Provided,* That any school district that received an overpayment under section 2 in fiscal year 1984 funds and also received, through administrative offset, 30.13 per centum of such sum in an overpayment of the subsequent fiscal year's funds, is relieved of the liability to repay those sums, together with interest on such sums".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 162 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the section designation in said amendment, insert "$1,123,075,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 165 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the section designation in said amendment, insert "$29,100,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 176 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert ", except that no funds shall be used for activities authorized by section 7043 until an interim report is submitted to the House and Senate Appropriations Committees which the Secretary shall submit no later than eight months following the enactment of this Appropriations Act in partial compliance with section 6212 of Public Law 10-297 and such sums are released under further statutory act of Congress,".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 177 to the aforesaid bill, and concur therein with an amendment as follows: Strike out the matter stricken by said amendment, and insert "$1,990,321,000 of which $5,213,000 shall be for carrying out title I of S. 2561, as enacted, and".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 201 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum inserted by said amendment, insert "$176,696,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 203 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum inserted by said amendment, insert "$85,447,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 204 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert ", of which $4,500,000 is available until expended for the cost of construction and related costs for a Health and Human Resources Center at Voorhees College in Denmark, South Carolina, when an authorization for such Center is enacted into law".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 203 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert ": *Provided further,* That an additional amount of $5,750,000 shall be made available, of which $5,000,000 shall be made available for part D of title I of the Higher Education Act of 1965, relating to the student literacy corps program, to be available on July 1, 1989, and remain available until September 30, 1990, and $750,000 shall be made available for section 6261 of the Omnibus Trade and Competitiveness Act of 1988, relating to international business education centers".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 220 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the first sum named in said amendment, insert "$33,731,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 222 to the aforesaid bill, and concur therein with an amendment as follows: Strike out the matter stricken by said amendment, and insert "$180,647,000: *Provided,* That of the funds appropriated under this head in the Department of Education Appropriations Act, 1988, not to exceed $500,000 together with $1,500,000 provided herein".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 233 to the aforesaid bill, and concur therein with an amendment as follows: Strike out the sum stricken by said amendment, and insert "$2,000,000 to become available on April 1, 1989, and".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 245 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert:

UNITED STATES BIPARTISAN COMMISSION ON COMPREHENSIVE HEALTH CARE

For necessary expenses of the United States Bipartisan Commission on Comprehensive Health Care established by section 401 of the Medicare Catastrophic Coverage Act of 1988, $1,046,000, which shall remain available until expended.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 246 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum named in said amendment, insert "$7,000,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 250 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert:

SEC. 515. (a)(1) Nothwithstanding any other provision of this Act, no department, agency, or instrumentality of the United States Government receiving appropriated funds under this act for fiscal year 1989, shall, during fiscal year 1989, obligate and expend funds for consulting services involving management and professional services; special studies and analyses; technical assistance; and management review of program funded organizations; in excess of an amount equal to 85 percent of the amount obligated and expended by such department, agency, or instrumentality for such services during fiscal year 1987.

(2) Notwithstanding any other provision of this Act, no department, agency, or instrumentality of the United States Government receiving appropriated funds under this act for fiscal year 1989, shall, during fiscal year 1989, obligate and expend funds for consulting services involving management and support services for research and development activities; engineering development and operational systems development; technical representatives; training; quality control, testing, and inspection services; specialized medical services; and public relations; in excess of an amount equal to 95 percent of the amount obligated and expended by such department, agency, or instrumentality for such services during fiscal year 1987.

(b) The Director of the Office of Management and Budget shall take such action as may be necessary, through budget instruction or otherwise, to direct each department, agency, and instrumentality of the United States to comply with the provisions of section 1114 of title 31, United States Code.

(c) As used in this section, the term "consulting services" includes any service within the definition of "Advisory and Assistance Services" in Office of Mangement and Budget Circular A-120, dated January 4, 1988.

(d) All savings to any department, agency, or instrumentality which result from the application of subsection (a), shall be used for the increase in rates of pay in such department, agency, or instrumentality made under this Act.

(e) The limitations contained in subsection (a) shall not apply to the Offices of Inspector General of the departments, agencies, and instrumentalities of the United States Government receiving appropriated funds under this Act. Neither shall the limitations in subsection (a) apply to routine, on-going activities which departments, agencies and instrumentalities provide through contract as part of their regular mission.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 256 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert:

SEC. 516. When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including but not limited to State and local governments, shall clearly state (1) the percentage of the total costs of the program or project which will be financed with Federal money, and (2) the dollar amount of Federal funds for the project or program.

SEC. 517. Notwithstanding any other provision of this Act, funds appropriated or otherwise made available which are not mandated by law for programs, projects or activities funded by this Act shall be reduced by 1.2 per centum.

Mr. CHILES. Mr. President, I move to reconsider the vote by which the Senate agreed to the House amendments.

Mr. WEICKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 126 IN DISAGREEMENT

The PRESIDING OFFICER. The clerk will report the amendment in disagreement.

The assistant legislative clerk read as follows:

The House insist on its disagreement to Senate amendment numbered 126.

The PRESIDING OFFICER. The pending question is the amendment in disagreement.

Mr. WEICKER. Mr. President, I move the Senate further insist on amendment No. 126, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. There will be 2 hours of debate on the motion.

MESSAGES FROM THE PRESIDENT RECEIVED DURING RECESS

Under the authority of the order of the Senate of February 3, 1987, the Secretary of the Senate, on September 9, 1988, received a message from the President of the United States submitting a nomination; which was referred to the Committee on Labor and Human Resources.

(The nomination received on September 9, 1988, is printed in today's RECORD at the end of the Senate proceedings.)

NOTICE ON AGGREGATE OUTLAY REDUCTION—MESSAGE FROM THE PRESIDENT RECEIVED DURING RECESS—PM 154

Under the authority of the order of the Senate of February 3, 1987, the Secretary of the Senate, on September 9, 1988, during the recess of the Senate, received the following message from the President of the United States; which, pursuant to the order of the Senate of January 30, 1975, as modified on April 11, 1986, was referred jointly to the Committee on the Budget, the Committee on Governmental Affairs, the Committee on Agriculture, Nutrition, and Forestry, the Committee on Armed Services, the Committee on Banking, Housing, and Urban Affairs, the Committee on Commerce, Science, and Transportation, the Committee on Energy and Natural Resources, the Committee on Environment and Public Works, the Committee on Finance, the Committee on the Judiciary, the Committee on Labor and Human Resources, the Committee on Small Business, the Committee on Veterans' Affairs, the Select Committee on Indian Affairs, and the Select Committee on Intelligence:

To the Congress of the United States:

In accordance with section 252(a)(5) of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law No. 99-177), as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law No. 100-119), I hereby note that the initial report of the Director of the Office of Management and Budget dated August 25, 1988, and my initial order of the same date, based thereon, indicated that no aggregate outlay reduction is required at this time. Accordingly, there is no further information to be provided pursuant to section 252(a)(5).

RONALD REAGAN.

THE WHITE HOUSE, *September 9, 1988.*

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE RECEIVED DURING RECESS

Under the authority of the order of the Senate of February 3, 1987, the Secretary of the Senate, on September 9, 1988, during the recess of the Senate, received a message from the House of Representatives announcing that the House has passed the following joint resolution, without amendment:

S.J. Res. 374. Joint resolution to provide for a settlement of the labor-management dispute between the Chicago and North Western Transportation Company and the United Transportation Union.

The message also announced that the House insists upon its amendments to the bill (S. 1579) to amend the Public Health Service Act to revise and extend the block grant program, and for other purposes, disagreed to by the Senate; agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. DINGELL, Mr. WAXMAN, Mr. SCHEUER, Mr. LENT, and Mr. MADIGAN as managers of the conference on the part of the House.

The message further announced that the House disagrees to the amendments of the Senate to the bill (H.R. 4637) making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1989, and for other purposes; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, appoints Mr. OBEY, Mr. YATES, Mr. MCHUGH, Mr. LEHMAN of Florida, Mr. WILSON, Mr. DIXON, Mr. GRAY of Pennsylvania, Mr. MRAZEK, Mr. WHITTEN, Mr. EDWARDS of Oklahoma, Mr. KEMP, Mr. LEWIS of California, Mr. PORTER, and Mr. CONTE as managers of the conference on the part of the House.

The message also announced that the House disagrees to the amendments of the Senate to the bill (H.R. 4784) making appropriations for rural development, agriculture, and related agencies programs for the fiscal year ending September 30, 1989, and for other purposes; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. WHITTEN, Mr. TRAXLER, Mr. MCHUGH, Mr. NATCHER, Mr. AKAKA, Mr. WATKINS, Mr. DURBIN, Mr. SMITH of Iowa, Mrs. SMITH of Nebraska, Mr. MYERS of Indiana, Mr. SKEEN, Mr. WEBER, and Mr. CONTE as managers of the conference on the part of the House.

The message further announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4783) making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 1989, and for other purposes; it recedes from its disagreement to the amendments of the Senate numbered 12, 28, 33, 36, 40, 41, 42, 45, 47, 50, 53, 57, 59, 60, 61, 62, 63, 64, 65, 67, 68, 69, 70, 71, 74, 78, 84, 87, 105, 115, 117, 120, 121, 127, 151, 166, 172, 173, 186, 199, 200, 208, 218, 225, 228, 231, 232, 244, 248, and 249 to the bill, and agrees thereto; it recedes from its disagreement to the amendments of the Senate numbered 8, 10, 20, 30, 37, 43, 44, 46, 48, 49, 51, 55, 58, 66, 72, 73, 75, 79, 80, 82, 85, 88, 100, 104, 106, 118, 130, 134, 137, 152, 153, 155, 157, 162, 165, 176, 177, 201, 203, 204, 209, 220, 222, 233, 245, 246, 250, and 256 to the bill, and agrees thereto, each with an amendment, in which it requests the concurrence of the Senate; and that the House insists upon its disagreement to the amendment of the Senate No. 126 to the bill.

The message also announced that the House agrees to the amendment of the Senate to the amendment of the House to the bill (S. 52) to direct the cooperation of certain Federal entities in the implementation of the Continental Scientific Drilling Program.

The message further announced that the House agrees to the amendment of the Senate to the amendment of the House to the bill (S. 1889) to amend the Geothermal Steam Act of 1970 to provide for lease extensions, and for other purposes.

The message also announced that pursuant to the provisions of section 276a-1 of title 22, United States Code, the Speaker appoints to the delegation

to attend the Conference of the Interparliamentary Union, to be held in Sofia, Bulgaria, on September 19 through September 24, 1988, the following Members on the part of the House: Mr. PEPPER, Chairman, Mr. HAMILTON, Vice Chairman, Mr. BROWN of California, Mr. SCHEUER, Mr. LATTA, Mr. WORTLEY, and Mr. BLAZ.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

The message further announced that the Speaker has signed the following enrolled bills and joint resolutions:

S. 2641. An act to authorize the Secretary of Agriculture and other agency heads to enter into agreements with foreign fire organizations for assistance in wildlife protection;

H.R. 4775. An act making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 1989, and for other purposes; and

S.J. Res. 374. Joint resolution to provide for a settlement of the labor-management disputes between the Chicago and North Western Transportation Company and the United Transportation Union.

Under the authority of the order of the Senate of February 3, 1987, the enrolled bills and joint resolution were signed on September 9, 1988, during the recess of the Senate, by the President pro tempore, Mr. STENNIS.

ENROLLED BILL AND JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that on September 9, 1988, he had presented to the President of the United States the following enrolled bill and joint resolutions:

S. 2641. An act to authorize the Secretary of Agriculture and other agency heads to enter into agreements with foreign fire organizations for assistance in wildfire protection;

S.J. Res 295. Joint resolution to provide for the designation of September 15, 1988, as "National D.A.R.E. Day"; and

S.J. Res. 374. Joint resolution to provide for a settlement of the labor-management dispute between the Chicago and North Western Transportation Co. and the United Transportation Union.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3840. A communication from the Managing Director of the Federal Communications Commission, transmitting, pursuant to law, copies of two new system reports and three altered system reports under the Privacy Act; to the Committee on Governmental Affairs.

EC-3841. A communication from the Director of Benefits, Farm Credit Bank of Texas, transmitting, pursuant to law, a report on the pension plan for the year ended December 31, 1987; to the Committee on Governmental Affairs.

EC-3842. A communication from the Director (Administration and Management), Department of Defense, transmitting, pursuant to law, copies of two new systems of records and one altered system submitted by the Department of the Army under the Privacy Act; to the Committee on Governmental Affairs.

EC-3843. A communication from the Chairman of the Federal Election Commission, transmitting, pursuant to law, revised routine uses for systems of records under the Privacy Act; to the Committee on Governmental Affairs.

EC-3844. A communication from the President of the United States, transmitting, pursuant to law, notifications of pay adjustments; to the Committee on Governmental Affairs.

EC-3845. A communication from the Director of the U.S. Marshals Service, Department of Justice, transmitting, pursuant to law, a report on the review of the Marshals Service for fiscal year 1987; to the Committee on the Judiciary.

EC-3846. A communication from the Secretary of Education, transmitting pursuant to law, a copy of a document entitled "Final Regulations for the Student Assistance General Provisions;" to the Committee on Labor and Human Resources.

EC-3847. A communication from the Chairman of the Advisory Committee on Student Financial Assistance, transmitting, pursuant to law, a study into the structure and costs of the Pell multiple data entry processing; to the Committee on Labor and Human Resources.

EC-3848. A communication from the Secretary of Education, transmitting, pursuant to law, a document entitled "Final Priorities for the National Adult Education Discretionary Program;" to the Committee on Labor and Human Resources.

EC-3849. A communication from the Board Members of the Railroad Retirement Board, transmitting, pursuant to law, a report on the 1990 budget submission; to the Committee on Labor and Human Resources.

EC-3850. A communication from the Secretary of Education, transmitting, pursuant to law, a document entitled "Final Regulations—Debt Collection;" to the Committee on Labor and Human Resources.

EC-3851. A communication from the Inspector General of the Railroad Retirement Board, transmitting, pursuant to law, a report on the inspector general's 1990 budget submission; to the Committee on Labor and Human Resources.

EC-3852. A communication from the Director of Communications and Legislative Affairs, Equal Employment Opportunity Commission, transmitting, pursuant to law, the annual report for the fiscal year 1987 on the Operations of the Office of General Counsel of the Commission; to the Committee on Labor and Human Resources.

EC-3853. A communication from the Chairman of the Federal Election Commission, transmitting, pursuant to law, the fiscal year 1990 budget request of the Commission; to the Committee on Rules and Administration.

EC-3854. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a cumulative report on budget rescissions and deferrals pursuant to the order of January 30, 1975 as amended by the order of April 11, 1986; referred jointly to the Committee on the Budget; the Committee on Appropriations, the Committee on Foreign Relations, the Committee on Agriculture, Nutrition, and Forestry; the Committee on Armed Services; the Committee on Energy and Natural Resources; the Committee on Labor and Human Resources; the Committee on the Judiciary; the Committee on Commerce, Science, and Transportation; and the Committee on the Finance.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BURDICK, from the Committee on Environment and Public Works, without amendment:

H.R. 517: A bill to designate Soldier Creek Diversion Unit in Topeka, Kansas, as the "Lewis M. Paramore Diversion Unit" (Rept. No. 100-501).

By Mr. BURDICK, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute:

S. 1792: A bill to authorize appropriations for the Office of Environmental Quality for fiscal years 1987, 1988, and 1989 (Rept. No. 100-502).

By Mr. BYRD (for Mr. BIDEN), from the Committee on the Judiciary, with an amendment in the nature of a substitute:

H.R. 3911: A bill to amend title 18, United States Code, to provide increased penalties for certain major frauds against the United States (Rept. No. 100-503).

By Mr. BYRD (for Mr. BIDEN), from the Committee on the Judiciary, without amendment:

H.R. 439: A bill for the relief of Thomas Wilson.

By Mr. BYRD (for Mr. BIDEN), from the Committee on the Judiciary, with an amendment:

H.R. 1490: A bill for the relief of Jean DeYoung.

By Mr. BYRD (for Mr. BIDEN), from the Committee on the Judiciary, without amendment:

S. 2637: A bill for the relief of Gillian Lesley Sackler.

ADDITIONAL COSPONSORS

S. 99

At the request of Mr. INOUYE, the name of the Senator from New Jersey [Mr. LAUTENBERG] was added as a cosponsor of S. 99, a bill to allow the Internal Revenue Code of 1986 to be applied and administered as if the 3-year basis recovery rule applicable to employees' annuities had not been repealed.

S. 708

At the request of Mr. PROXMIRE, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of S. 708, a bill to require annual appropriations of funds to support timber management and resource conservation on the Tongass National Forest.

S. 2246

At the request of Mr. BUMPERS, the name of the Senator from New Jersey [Mr. BRADLEY] was added as a cosponsor of S. 2246, a bill to establish the

Lower Mississippi Delta Development Commission.

S. 2367

At the request of Mr. LAUTENBERG, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 2367, a bill to promote highway traffic safety by encouraging the States to establish measures for more effective enforcement of laws to prevent drunk driving, and for other purposes.

S. 2411

At the request of Mr. MITCHELL, the name of the Senator from Kentucky [Mr. FORD] was added as a cosponsor of S. 2411, a bill to amend the Internal Revenue Code of 1986 to extend the low-income housing credit through 1990.

S. 2549

At the request of Mr. LAUTENBERG, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 2549, a bill to promote highway traffic safety encouraging the States to establish measures for more effective enforcement of laws to prevent drunk driving, and for other purposes.

S. 2669

At the request of Mr. BOREN, the names of the Senator from California [Mr. CRANSTON], the Senator from Missouri [Mr. BOND], the Senator from Oklahoma [Mr. NICKLES], the Senator from Wyoming [Mr. SIMPSON], and the Senator from Montana [Mr. MELCHER] were added as a cosponsors of S. 2669, a bill to amend section 1388 of the Internal Revenue Code of 1986.

SENATE JOINT RESOLUTION 337

At the request of Mr. COCHRAN, the names of the Senator from Hawaii [Mr. INOUYE], the Senator from Idaho [Mr. MCCLURE], the Senator from Maryland [Ms. MIKULSKI], the Senator from Delaware [Mr. ROTH], the Senator from Alabama [Mr. SHELBY], the Senator from New York [Mr. D'AMATO], the Senator from Virginia [Mr. TRIBLE], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Maine [Mr. MITCHELL], the Senator from Illinois [Mr. DIXON], the Senator from Washington [Mr. ADAMS], the Senator from Alaska [Mr. STEVENS], the Senator from Rhode Island [Mr. PELL], the Senator from New Hampshire [Mr. HUMPHREY], the Senator from Wisconsin [Mr. KASTEN], the Senator from Georgia [Mr. NUNN], the Senator from North Carolina [Mr. SANFORD], the Senator from Nevada [Mr. REID], the Senator from Maryland [Mr. SARBANES], the Senator from Massachusetts [Mr. KERRY], the Senator from Louisiana [Mr. BREAUX], the Senator from Arkansas [Mr. BUMPERS], and the Senator from Minnesota [Mr. DURENBERGER] were added as cosponsors of Senate Joint Resolution 337, a joint resolution acknowledging the sacrifices that military families have made on behalf of the Nation and designating November 21, 1988, as "National Military Families Recognition Day."

SENATE JOINT RESOLUTION 355

At the request of Mr. HEFLIN, the names of the Senator from Maryland [Mr. SARBANES], the Senator from Maine [Mr. MITCHELL], the Senator from Mississippi [Mr. STENNIS], the Senator from Ohio [Mr. METZENBAUM], the Senator from Missouri [Mr. BOND], and the Senator from Iowa [Mr. GRASSLEY] were added as cosponsors of Senate Joint Resolution 355, a joint resolution designating October 7, 1988, as "National Teacher Appreciation Day".

SENATE JOINT RESOLUTION 357

At the request of Mr. CRANSTON, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of Senate Joint Resolution 357, a joint resolution designating the week beginning November 6, 1988, as "National Women Veterans Recognition Week".

SENATE JOINT RESOLUTION 361

At the request of Mr. PELL, the names of the Senator from Missouri [Mr. DANFORTH], the Senator from Arkansas [Mr. PRYOR], the Senator from Illinois [Mr. SIMON], the Senator from Alabama [Mr. SHELBY], and the Senator from Oregon [Mr. PACKWOOD] were added as cosponsors of Senate Joint Resolution 361, a joint resolution designating the week of September 25, 1988, as "Religious Freedom Week".

SENATE JOINT RESOLUTION 363

At the request of Mr. SARBANES, the names of the Senator from Pennsylvania [Mr. SPECTER], the Senator from Arizona [Mr. DECONCINI], the Senator from New York [Mr. D'AMATO], and the Senator from Utah [Mr. HATCH] were added as cosponsors of Senate Joint Resolution 363, a joint resolution designating November 28 through December 2, 1988, as "Vocational-Technical Education Week".

SENATE JOINT RESOLUTION 364

At the request of Mr. HELMS, the names of the Senator from Idaho [Mr. SYMMS], the Senator from Idaho [Mr. MCCLURE] and the Senator from Georgia [Mr. NUNN] were added as cosponsors of Senate Joint Resolution 364, a joint resolution to designate the week of October 2 through October 8, 1988, as "National Paralysis Awareness Week."

SENATE JOINT RESOLUTION 369

At the request of Mr. KERRY, the names of the Senator from Hawaii [Mr. INOUYE], the Senator from Maryland [Ms. MIKULSKI], the Senator from New Jersey [Mr. BRADLEY], the Senator from Maryland [Mr. SARBANES], the Senator from Mississippi [Mr. COCHRAN], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Connecticut [Mr. DODD], the Senator from Delaware [Mr. ROTH], the Senator from North Carolina [Mr. SANFORD], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Connecticut [Mr. WEICKER], the Senator from Oregon [Mr. PACKWOOD], the Senator from Mississippi [Mr. STENNIS], the Senator from Maine [Mr. COHEN], the Senator from Washington [Mr. EVANS], the Senator from Maine [Mr. MITCHELL], the Senator from Georgia [Mr. FOWLER], the Senator from Alaska [Mr. MURKOWSKI], the Senator from California [Mr. CRANSTON], the Senator from Hawaii [Mr. MATSUNAGA], and the Senator from Vermont [Mr. STAFFORD] were added as cosponsors of Senate Joint Resolution 369, a joint resolution to designate the period of September 17 through October 10, 1988, as "Coastweeks '88."

SENATE RESOLUTION 385

At the request of Mr. HEINZ, the names of the Senator from South Dakota [Mr. PRESSLER], the Senator from New Jersey [Mr. BRADLEY], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Indiana [Mr. QUAYLE], the Senator from Maine [Mr. COHEN], the Senator from Kansas [Mr. DOLE], the Senator from Pennsylvania [Mr. SPECTER], the Senator from Tennessee [Mr. GORE], the Senator from Michigan [Mr. LEVIN], the Senator from Alaska [Mr. STEVENS], the Senator from Utah [Mr. HATCH], the Senator from Ohio [Mr. METZENBAUM], the Senator from California [Mr. WILSON], the Senator from Nebraska [Mr. EXON], the Senator from Arizona [Mr. MCCAIN], the Senator from Idaho [Mr. MCCLURE], and the Senator from Illinois [Mr. DIXON] were added as cosponsors of Senate Joint Resolution 385, a resolution expressing the opposition of the Senate to the continued control of the cathedral of Vilnius, Lithuania, by the Union of Soviet Socialist Republics.

NOTICES OF HEARINGS

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Select Committee on Indian Affairs will be holding a hearing on Monday, September 12, 1988, in Senate Russell 485, beginning at 2 p.m., on S. 2752, lands held in trust for the Quinault Indian Tribe.

On Wednesday, September 14, 1988, in Senate Russell 485, beginning at 9:30 a.m., the committee will be holding a markup on S. 187, the Native American Cultural Preservation Act, H.R. 3621, Southern California Indian Land Transfer Act; S. 2672, the Federal recognition of the Lumbee Tribe of North Carolina; and for other purposes, to be followed by a hearing on S. 2723, the Hoopa-Yurok Indian Reservation.

Those wishing additional information should contact the Indian Affairs Committee at 224-2251.

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

Mr. BUMPERS. Mr. President, I would like to announce for the public that two additional measures will be heard before the Subcommittee on Public Lands, National Parks and Forests on September 14, 1988. The measures are: S. 2750, a bill to authorize a study on methods to commemorate the nationally significant contributions of Georgia O'Keeffe; and S. 2767, a bill to authorize a study of the history and culture of Warm Springs, NM, in order to preserve its historic and cultural legacy for future generations.

SUBCOMMITTEE ON AGRICULTURAL RESEARCH AND GENERAL LEGISLATION

Mr. LEAHY. Mr. President, I wish to announce that the Subcommittee on Agricultural Research and General Legislation of the Committee on Agriculture, Nutrition, and Forestry will hold a joint hearing with the House Agriculture Subcommittee on Department Operations, Research, and Foreign Agriculture, to receive testimony on the critical challenges facing agricultural research. The hearing will be held on September 29, 1988, at 10 a.m., in room 332 Russell Senate Office Building.

Senator KENT CONRAD will preside. For further information please contact Suzy Dittrich of the subcommittee staff at 224-5207.

AUTHORITY FOR COMMITTEES TO MEET

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. BYRD. Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs be authorized to meet on Monday, September 12, 1988, at 2 p.m., to hold a hearing on S. 2752, lands held in trust for the Quinault Indian Tribe.

The PRESIDING OFFICER. Without objection, it is ordered.

ADDITIONAL STATEMENTS

ACID RAIN

● Mr. MOYNIHAN. Mr. President, I hope my colleagues can take the time to read the article I will enter into the RECORD today from the Schenectady Gazette regarding some of the ongoing research on acid rain. As the story points out, this and most of the other acid rain research going on around the country is being sponsored by NAPAP—the National Acid Precipitation Assessment Program—a creature of our own creation. It is the child of the only legislation on acid rain that this body has ever approved. And if the research it has brought about has the desired result, we will be able to use the data it has amassed to prove that acid rain does exist, that it is damaging our streams and forests and lakes, and that something need be done.

Mr. President, I ask that the text of the attached article appear in the RECORD at this point.

The article follows:

[From the Schenectady Gazette, Sept. 3, 1988]

ACID RAIN: WHO SHOULD PROVE WHAT TO WHOM?

(By Donella H. Meadows)

Every weekday morning this summer, six college students set out from the Ravine Lodge on Mt. Moosilauke in New Hampshire to spend the day measuring trees. They brushwack through the forest to 15 marked plots on the east side of the mountain. Each plot is 20 meters square; some are at low altitude, some medium, some high. There are 15 more plots on the west side; the two sides are studied in alternate years. The students carry rain gear, lunches, insect repellent, and small computers into which they enter data about every red spruce and balsam fir in the plots.

If you have ever wondered what it takes to prove that acid rain is destroying the forests, this is what it takes.

The students tag every tree and log its position, so it can be identified again two years from now. They classify it—is it dominant with its crown topping the forest, or intermediate or low, suppressed in the shade of others? How much needle loss does it show? If it's a sapling, how tall is it, what is its needle condition, how has it grown over the last two years?

When you're measuring trees, you have to be careful where you step so you don't disturb the fragile mountain soil. On some plots there are so many sapplings it takes days of tedious work to measure them all. The ground is sloping and uneven—making grid measurements is not easy. You can get into arguments about whether a half-defoliated tree is in Decline Class 2 (10-50 percent needle loss) or Decline Class 3 (50-99 percent needle loss).

Back at the lodge in the evening, the students transfer their data from the field computers to diskettes for storage and statistical processing at Dartmouth College.

At other sites on Moosilauke, researchers take core samples from tree trunks to measure growth rings. A meteorological station measures humidity, temperature, wind, ozone, and the acidity of rain, fog, and cloud (pollutants can be five to 10 times more concentrated in clouds than in rain). Altogether, nine professors from four universities are doing acid-rain studies on the mountain, with the help of 16 students and two lab assistants.

The smokestacks and tailpipes of this nation emit over 20 million tons of sulfur dioxide and nearly the same amount of nitrogen oxides each year. In the atmosphere, these pollutants form sulfuric and nitric acid, which come back to earth in fog, cloud, snow, rain. You might think it obvious that a steady wash of acid would harm structures, statues, streams, soils and forests. But the government and the polluting industries need proof before taking corrective steps that may cost billions of dollars.

Moosilauke is one of six study sites for spruce-fir forests (the others are in Virginia, Tennessee, North Carolina, Maine, and New York). Other studies are going on in southern commercial forests, western conifer forests, and eastern hardwood forests. The meteorological station is part of a multi-state Mountain Cloud Chemistry Program. All field studies are coordinated with remote sensing data from satellites. This network of forest research is just one part of a national effort called NAPAP, the National Acid Precipitation Assessment Program.

NAPAP was mandated by Congress in 1980 and funded through 1990. Many of its research projects didn't get under way until halfway through the 10-year period (the Moosilauke work began in 1986). This year NAPAP is costing the nation $83.5 million. That's a lot or a little, depending on how you look at it. It's one of the most complex environmental research programs the nation has ever undertaken. It's 1 percent of the cost of correcting the faults of the B1B bomber.

Whether you consider NAPAP a big deal or a small one, it is not enough to prove that acid rain kills forests. It has proved that the rain is acid. (Moosilauke registered a pH 2.85 rain on Aug. 20—that's nearly 1,000 times more acid than normal.) There's no doubt that trees are dying. In some places on Moosilauke, 30 percent of the red spruce are standing dead; in places on Whiteface Mountain, 60-70 percent are dead. Growth rings show that tree growth slowed 20 years ago—just when high smokestacks became a fashionable way to ease local air pollution.

But that doesn't prove that acid rain is the cause of tree damage, or that the observed damage is unusual. Scientists aren't even sure how long a dead spruce stays standing. It may be normal on Moosilauke for 30 percent of the spruce to be dead. The slowdown in growth may be due to climate change, or ozone pollution, or insect infestations, or some combination. Sorting out the possibilities will take more than $80 million a year and longer than 10 years.

Experienced foresters say they have never before seen the kind of damage now evident in the spruce-fir forests. But that subjective testimony is not enough for scientists, nor for politicians, nor for a nation that likes cheap electricity and internal combustion engines.

So we have challenged ecologists to prove that air pollution is damaging the forests, not pollution emitters to prove that it isn't. We all pay the research bill, which is large enough to be politically impressive, but not large enough, soon enough, to produce unsettling results while present politicians are still in power. While the studies go on, we make no special effort to reduce emissions. That would put the burden of uncertainty on the people who make their living in coal-burning industries. Instead, the burden of uncertainty is borne by all creatures whose lives depend on the integrity of the streams and soils and forests—and that includes us all.●

CAPITAL GAINS TAX

● Mr. KASTEN. Mr. President, the economic case for cutting the tax rate on capital gains has never been more compelling. Countries all over the world have followed America's lead in favoring progrowth investment by cutting their capital gains tax. Some countries don't tax capital gains at all.

Holding out against the American example over the last few years has

been—of all countries—America. We've actually increased this tax over the last couple of years, through the 1986 Tax Reform Act.

If we want to preserve and extend the American miracle of the 1980's—the historic economic expansion and record-setting creation of new jobs—it is essential that we promote investment and venture capital. An article in the Wall Street Journal of September 8 sheds important new light on the case for a capital gains cut, and I ask that it be included in the RECORD.

The article follows:

[From the Wall Street Journal, Sept. 8, 1988]

HARDLY ANYONE SEEMS TO UNDERSTAND CAPITAL GAINS

(By Lindley H. Clark, Jr.)

In another attack on George Bush last week, Michael Dukakis said, "He's propposed a five-year, $40 million capital-gains giveaway. Most of it will go to people making more than $200,000 a year. That's not building an economy; that's feathering a nest."

It's too much to expect a great deal of logic in political discussions, especially when they're about business and economics. Perhaps it's best to recall that special treatment of capital gains was an effort to make our economy function better—it prospers in large part because some people are willing to risk money developing products and processes.

Our ordinary income-tax system discourages risk-taking. Paul A. Samuelson of the Massachusetts Institute of Technology put it this way in his textbook. "Economic": "Taxing a retired innovator's income may seem to have no distorting effects. But we must not forget the young innovator who can then no longer look forward to reaping a tidy sum from his new ideas. He may decide to take the civil service job or remain thirteenth vice-president of a bank. You cannot tax the result of an old innovation without somewhat affecting the prospect of an as-yet unborn innovation.

"If Congress taxes risky activities more heavily than routine activities, what can any reasonable person expect to happen? People will naturally tend to avoid venturous fields and to gravitate toward routine, steady ones."

Some other industrial nations have attacked this problem by taxing capital gains lightly or not at all. The U.S. for many years taxed capital gains less heavy than ordinary income but imposed a strict limt on the deduction of the losses that normally go along with risk-taking.

But the 1986 revenue act, which was advertised as monumental tax reform, taxed capital gains as ordinary income. Well, that's not quite true. The law retained limitations on the deduction of losses, so, as matters now stand, capital gains are taxed more heavily than ordinary income. It's a good plan to steer more young people toward careers as 13th vice presidents.

The 1986 act was supposed to be a Reagan administration achievement, but the Republicans seem to recognize that it had its limitations. The GOP campaign platform doesn't refer to the 1986 act when it calls for a cut in the tax rate on long-term capital gains "to promote investment in jobs and to raise revenue for the federal government." Instead, in a nice bit of bipartisanship, it refers to a Carter-era capital-gains rate cut as well as the cut adopted in the first year of the Reagan administration. As a result of these cuts, the platform says, capital-gains tax revenues rose 184% from 1978 to 1985.

Even some friends of Gov. Dukakis appear to believe that something went wrong. Investment banker Felix Rohatyn, who might be treasury secretary in a Dukakis administration, has suggested a lower tax rate on long-term capital gains.

The 1986 act did promote a short-term burst of revenue. The law went into effect Jan. 1, 1987, and there was a rush to realize gains before that higher rate took effect. The rate for the average capital-gains taxpayer jumped to 21% from 9%, and realizations in 1986 were nearly double the 1985 level.

In fact, the revenue increase from the capital-gains tax rise looks like a one-shot affair, due entirely to the rush to beat the increase. Lawrence Lindsey of Harvard examined several economic models and concluded. "The prospects that the higher marginal tax rates on capital gains in the new tax law will produce more capital-gains-tax revenue seem remote. . . . The response of gains to permanent tax-rate changes produces a smaller amount of revenue in four of the five models and static revenue in the fifth."

What tax planners often seem to forget is that realization and taxation of capital gains are largely at the discretion of the taxpayer. In an average year, only a small portion of the accrued gain will actually be realized. Faced with what Prof. Lindsey says may well have been the largest capital-gains tax-rate increase since the advent of the income tax in 1913, it would be normal for many taxpayers to opt to hold onto their assets a bit longer.

The capital-gains tax-rate increase, ironically enough, came at a time when increasing U.S. competitiveness had seemed to have become a bipartisan cause. Last October's stock-market crash led to a variety of proposals for discouraging "speculation," which is usually the villain when the market drops. Most such proposals were aimed at discouraging speculation without deterring long-term investment.

Gov. Dukakis may be right when he says that most of the benefits of Mr. Bush's capital-gains tax cut would go to taxpayers with income over $200,000. However, he may have a hard time selling that argument politically. As Prof. Lindsey says, most of the individual recipients of capital gains have incomes of less than $50,000 a year. Taxpayers with incomes under $30,000 generally saw a tripling of their capital-gains tax rates.

The politicians who drafted the 1986 act thus committed one error their predecessors avoided. Experimentation with capital-gains law had been common for many years. In another study. Prof. Lindsey considered the period 1965–1982. Changes in the law occurred, on the average, every other year. However, "in the case of taxpayers earning under $50,000 . . . the variation in tax rates was quite small.

"Over that 18-year period, the average marginal tax rate on capital gains for these taxpayers varied between a high of 13.8% in 1969 and a low of 10.6% in 1979." Thus, for the vast majority of capital-gains recipients, tax-rate rises such as they saw in 1986 were without precedent.

The 1986 act thus was bad politics as well as bad economics. Norman Ture, who was an architect of the Reagan administration supply-side tax cuts, summed it up this way at a Cato Institute conference:

"Implementation of the entrepreneurial zest for starting new businesses and for risky, innovative ventures requires the infusion of capital, very often supplied by outside investors. For both outside investors and entrepreneurs, the reward sought is primarily an increase in the value of the equity investment in the venture.

"For outside investors, in particular, it is important to be able to realize the appreciated capital and to transfer it into promising new ventures. Raising the tax on capital gains blunts the inducement for undertaking these ventures in the first place."

It's surely no way to make the U.S. more competitive.●

LAND AND WATER CONSERVATION FUND

● Mr. ADAMS. Mr. President, today I rise again to express my support for the land and water conservation fund [LWCF]. As my colleagues are aware, the LWCF provides many tangible benefits to our communities. The State grants funding of the LWCF has often provided localities with the necessary seed money to acquire, develop, or repair recreational facilities. Earlier this year, I spoke about some of the communities that have benefited from such grants. In order to further demonstrate the importance of the LWCF to my State of Washington, I would like to take this opportunity to list other particular projects located in our eight congressional districts which were made possible by LWCF funds. It is my hope that these additional examples will further demonstrate the importance of the LWCF State Grants Program and that its contribution will be kept in mind during congressional consideration of the American heritage trust fund legislation and other measures to provide increased funding for recreational development. I should add that the following information was provided to me by Robert Wilder, who is the director of the Interagency Committee for Outdoor Recreation in Washington State. Mr. Wilder has done outstanding work in the recreational field and I commend him for his leadership on this issue.

EDMONDS FISHING PIER

First Congressional District

Project sponsor: Washington Department of Fisheries and City of Edmonds.

Project funding:

LWCF (33%)	$282,735
State funding (67%)	475,043
Total project cost	707,778

Since its completion in 1980, the Edmonds fishing pier has attracted over 1 million visitors for both fishing purposes and to enjoy its view of Puget Sound. Construction of the pier also triggered substantial public and private investment in the rebirth of the city of Edmonds' waterfront as a public attraction. The Edmonds waterfront continues to evolve with new wa-

terfront parks and several shops and restaurants replacing older commercial/light industrial uses.

The fishing pier itself is used virtually 24 hours per day by those who don't have the luxury of a boat to fish the waters of Puget Sound. The 500-foot-long pier reaches deep water to an artificial reef that is home to a variety of fish. The success of the Edmonds Pier has led to construction of similar piers in Seattle, Tacoma, and Bremerton.

BOULEVARD PARK

Second Congressional District

Project sponsor: City of Bellingham.

Project cost:

LWCF (50%)	$631,800
Local (50%)	361,800
Total project cost	723,600

The city of Bellingham fronts miles of beautiful Bellingham Bay with very little public access. In 1976, the city purchased a 5-acre abandoned industrial site for a waterfront park. This acquisition was possible only because of the availability of Land and Water Conservation Fund moneys. In 1980, following a second land and water conservation fund program grant, construction began on what is now Bellingham's only major waterfront park. The park itself is a wonderful combination of pathways, lawns, viewpoints, and guest boater docks on Bellingham Bay.

This project is a prime example of a community's use of Land and Water Conservation Fund Program funds to meet a critical need for the acquisition and development of park facilities. Additionally, through the availability of Land and Water Conservation Fund moneys, the city of Bellingham was able to transform the unpleasant remains of an industrial site into a much-needed waterfront park, thereby revitalizing valuable waterfront property.

SALMON CREEK GREENWAY

Third Congressional District

Project sponsor: Clark County.

Project funding:

LWCF (50%)	$487,246
State funding (10%)	100,000
Local funding (40%)	387,246
Total project cost	974,492

The Clark County Salmon Creek Greenway is a 2-mile river trail and park corridor located in the rapidly growing edge of Vancouver, WA. The availability of Federal Land and Water Conservation Fund moneys for this project has resulted in the donation of over 100 acres of private property. These valuable donations have not only provided public parkland, but also served as the local matching share for the project.

The Salmon Creek Greenway provides a river trail for canoes on Salmon Creek, as well as property for both intensely developed park areas and undeveloped trail and habitat areas. Now considered a model project, the Salmon Creek Greenway is a living testimonial to the ability of Land and Water Conservation Fund moneys to create local investment, including private land donations for public parklands.

SWIMMING POOLS IN WASHINGTON'S FOURTH CONGRESSIONAL DISTRICT

Fourth Congressional District

Project sponsors: Douglas County, City of Ellensburg, City of Kennewick, City of Grandview, City of Richland, City of Okanogan, City of Cashmere, City of Wenatchee.

Project cost:

LWCF (40%)	$1,384,853
State (10%)	322,839
Local (50%)	1,685,956
Total project cost	3,393,648

For small, rural communities in Eastern Washington, few public facilities are more treasured than the community swimming pool. Summers are hot and the local pool is often one of the few available recreation activities. While most communities have a pool, many are 20 to 50 years old and in need of repair or replacement. The Land and Water Conservation Fund program is critical to these communities as a fund source for the renovation and replacement of swimming pools in small towns which, with help from programs like the LWCF, are willing to make great sacrifices to fund, operate, and maintain their community pools. This joint effort results not only in an enjoyable and safe place for residents to swim, but also creates a facility that is important to the vitality and quality of life of many communities.

RIVERFRONT PARK

Fifth Congressional District

Project sponsor: City of Spokane.

Project cost: (LWCF/IAC grant projects only.)

LWCF (7%)	$500,166
State (21%)	1,528,515
Local (72%)	5,085,711
Total project cost	7,114,392

The acquisition and development of Riverfront Park in Spokane, WA, is an outstanding example of what the investment of LWCF funds can do to revitalize a city.

Prior to the late 1960's, Havermale Island and the area surrounding the Spokane River in the heart of city of Spokane, was inhabited by railroad yards and deteriorating industrial sites. The people of Spokane did not have access to a major feature of their city, the Spokane River. In the early 1960's Spokane's leaders began considering construction of a major downtown riverfront park complex and the development and sponsorship of a World Exposition. In order to make these plans become a reality, major public investment was needed to acquire Havermale Island and the surrounding riverfront properties. Between 1967 and 1978, the Land and Water Conservation Fund proivded matching grants to the city of Spokane to assist in the accomplishment of that goal. Spokane now has one of finest major park and tourist attractions in the Pacific Northwest—Riverfront Park. This relatively small investment of funds helped serve as a catalyst for major investment of state and local funds.

FIFE COMMUNITY SWIMMING POOL

Sixth Congressional District

Project sponsor: City of Fife.

Project funding:

LWCF	$241,000
State	222,000
Local	937,000
Total project cost	1,400,000

The city of Fife's Community Swimming Pool is a powerful example of the ability of the LWCF program to encourage local initiative to meet local needs. A Federal investment of $241,000 led to a State and local investment of over $1.1 million. This "leveraging capability" is not uncommon for projects using Land and Water Conservation moneys and is, in fact, one of its major strengths. The Fife pool is a modern, indoor pool that is serving the needs of all segments of the population in Fife and beyond.

GREEN LAKE PARK

Seventh Congressional District

Project sponsor: City of Seattle.

Project funding:

LWCF (50%)	$308,376
Local (50%)	308,376
Total project cost	616,752

Green Lake Park, located in north Seattle, may well be the most heavily used park in the State of Washington. This 87-acre park with its pathways, fields, and play areas is used by walkers, joggers, bicyclists, ball players, swimmers, and other numerous park enthusiasts. Green Lake has been a city park for many years and is in consent danger of being used to death. In 1980, the city of Seattle was able, with assistance from the LWCF, to renovate and improve this park. The use of LWCF moneys for renovation is critical to local governments managing heavily used parks in urban areas.

NEWCASTLE BEACH

Eighth Congressional District

Project sponsor: City of Bellevue.

Project cost:

LWCF (14%)	$294,000
State (3%)	72,150
Local (83%)	1,699,590
Total project cost	2,066,033

The city of Bellevue is a rapidly growing urban area with very little public access to its waterfront. Fortunately, in 1971 the city was able to acquire 11 acres of property with 330

feet of frontage on Lake Washington. The acquisition cost $288,600 and was made possible only by a grant to the city of LWCF funds.

After years of planning, in July 1988, the city of Bellevue dedicated a $1.6 million waterfront park development known as Newcastle Beach Park. The Land and Water Conservation Fund contributed $150,000 toward the completion of this beautiful, multiuse park. Newcastle Beach Park is a prime example of the importance of the LWCF toward meeting local governments' critical need to acquire affordable land in rapidly growing urban areas to meet current and future park and open space needs.●

SENATOR HUMPHREY'S PRO LIFE LEADERSHIP

● Mr. ARMSTRONG. Mr. President, our colleague Senator GORDON HUMPHREY is one of America's foremost leaders in the fight to give unborn babies the right to life. Senator HUMPHREY was invited to be the major speaker at the annual National Right-to-Life Convention. His remarks were preceded by the moving testimony of a young woman who regrets an abortion she had years before.

Both speeches are well-worth reading. I ask their remarks be inserted at this point in the CONGRESSIONAL RECORD.

The remarks follow:

REMARKS OF CATHY CLARK, NATIONAL RIGHT TO LIFE CONVENTION, JULY 23, 1988

Thank you. First of all, I'm supposed to say I'm from Ohio. Thank you, and I'm really happy to be here, and I just want to quickly give you a little story about this song.

When I was seventeen years old I was pregnant and very much alone. My boyfriend left me, he moved to Finland—far away, needless to say. I didn't know his phone number and I couldn't get a hold of him. He was gone and I was all by myself.

I went to see my family doctor. My father, when I told him I was pregnant, took me to see our family doctor. He said, yes, that I was six weeks pregnant and he would send me for counseling. So I went to see a clergymen in our area for counseling. He listened to me for forty-five minutes tell him why at the age of seventeen I didn't want to be pregnant. I didn't want to have a baby and everything I told him started with "I" or "me."

When he listened to me he didn't have anything to say until the end. Then he said, "Yes, I believe that you are a good candidate to have an abortion." He gave me the name of women's services in New York City, and the phone number. I called and I made an appointment, and I did go and have an abortion there. I won't go into all the details because we don't have time, but I want you to know that this didn't bother me.

For ten long years I didn't tell anybody. I didn't listen to the pro-life talks that were starting to come on the issues. I didn't listen, I didn't watch T.V., I didn't want to hear about babies. This is when live births were starting to be shown on T.V., more graphic pictures, and I didn't want to see it.

I just totally ignored it until I had two little ones running around at my feet and it started to bother me, and I started to look at them. Crystal's got brown eyes and brown hair and she's just so precious, and Michael's got blond hair and blue eyes and he's just a rascal. I thought "Which one would this child have been like?" Would it have been like my little angel Crystal? Or would it have been like Michael?

It just really haunted me, and I prayed, and I said, "God, you know, help me, help me, heal me, forgive me for what I've done." I felt that God couldn't forgive someone who had done this terrible, terrible thing. I thought that I had finally committed the unforgivable sin.

My husband, who was not the father of that child, would come home at night after work and I could be sitting at the kitchen table, crying my eyes out. He would say, "Oh Cathy," he would say, "God loves you and I love you and you're an important person." He would pray with me until I felt like I really reached heaven and the next day he would come home and the same thing would be happening. At night I would go to bed and I would cry and he didn't condemn me. He rolled over and he put his arm around me, and he let me cry myself to sleep. He's a good man.

I prayed and I prayed, and you know God forgives you the very first time you ask him, but a gift is not yours until you accept it. He was offering me his forgiveness but I wasn't taking it because I felt so unworthy.

Then one day I decided God really did forgive me, and I could feel it. I was just so warm all over because I finally felt God healing my life.

When he brought me this healing he brought me the words to a song. I wrote the words down and realized that this song was about this little baby that's in heaven with Jesus. You know, I'm going to see the baby some day and I'm looking forward to a family reunion.

But, you know, even more than that, God completed the healing in my heart with these words. That's what I'm going to sing for you now. It's called "Two Little Hands."

TWO LITTLE HANDS

Two little hands that I'll never hold.
Two little feet I can't keep from the cold.
One little soul that will have no years.
Two little eyes, but I'll not dry your tears.
Searching for love, I let your love go.
I didn't know
Little child of mine.
I was alone, and I was so blind.
I was so young
Little child of mine.
Beautiful smile that I'll never see.
Little fingers reaching for me.
One little heart that needed me so.
One little life that I just let go.
Searching for freedom I let you die.
And I don't know why,
Little child of mine.
I'll never heal sweet little boy.
You had no choice.
Little child of mine.
I'll never see you when you're at play.
Or help you take your first step someday.
I can't see you now
I can't watch you grow, or help you decide which way you should go.
Searching for love I let your love go
I didn't know
Little child of mine.
I was alone and I was so blind
I was so young.
Little child of mine.
Jesus deliver this message please.
Tell him I'm sorry for what I have done.
Hold him real close and don't let him cry.
Please won't you sing him a sweet lullabye.
Rock-a-bye, and good night.

REMARKS OF SENATOR GORDON J. HUMPHREY, RIGHT TO LIFE CONVENTION, JULY 23, 1988

Thank you very much. I will confess to you that at times I wonder if it is really so wise for me to be so outspoken against abortion, and to subject myself and my family to the kind of criticism which comes my way, and your way. But after listening to Cathy Clark tell of her heartbreak and her ultimate forgiveness, I know that what I'm doing and what you are doing is absolutely right, and we're going to keep right on going.

We're going to keep right on going until every American citizen understands that the off-spring of human beings are human beings. And that abortion kills human beings. That's our only quarrel. If it weren't so, we'd have better things to be doing than meeting here tonight. But abortion kills human beings, and that's the bottom line with us. We cannot rest until the slaughter is brought to an end.

Mike Dukakis did us a little bit of a favor last night, in spite of himself. I didn't watch it I must confess, but I was told about something he said. At the very end of his remarks, Mike Dukakis made an emotional pitch to our family sensibilities—talking about his family, and talking about how they're all looking forward to a blessed event in January when "a baby," will be born. This baby is now three months old, three months in gestation, and Michael Dukakis is calling it "a baby." So you see the truth will get out even in spite of our opponents sometimes.

Well, I have a question for Mike Dukakis: Mike, if you believe it's a baby, if you believe they're babies at three months, then why aren't you doing something about abortion? Why do you propose to lead this country and ignore the slaughter of babies? That's my question, and I don't think he can answer it.

Those who were watching the news ten or twelve days ago, were shocked when it was reported that a young woman had given birth to a baby aboard a commercial airliner. What was shocking about it was that she had given birth in the lavatory of that airliner on a coast to coast flight early in the flight, and upon giving birth she stuffed the baby into the trash bin. What was shocking is that she went back to her seat and in the ensuing three or four hours during the flight to the West Coast she told no one about that baby back there in the trash. What was so shocking is when the airplane landed she got off the plane and left the airport, and told no one about the baby in the trash. Thank God that plane was scheduled for a quick turnaround, and the cleaning crew came aboard, and thank God one of the cleaners in cleaning the lavatory heard the baby, and there he found her under some dirty paper towels.

About a year ago, in another locality, a young woman gave birth to an infant in the lavatory adjacent to the waiting room of a hospital emergency room. After having given birth she attempted to drown the child by stuffing it head first into the commode. Thank God someone heard the struggle and intervened and saved the baby's life.

Last fall, up in my part of the country, in Vermont actually, but just a mile or two across the border from New Hampshire,

very early one frosty September morning—believe me it gets frosty in September, you get a clear night it gets mighty cold up there—a delivery man stopped his truck at a rest area on an interstate highway. Walking by a trash can, you guessed it, another baby in the trash. A brand new baby girl, almost died from hyperthermia. In fact, the doctors were utterly amazed that she survived.

We have entered the era of throw-away babies. Should anyone be surprised? We certainly are not surprised. Because if it's OK to treat a baby as garbage before that baby passes through the birth canal, then why isn't it OK to treat a baby as garbage, and dispose of it as garbage, after the passage through the birth canal? Far as I can see it's OK. I mean, if it's OK to treat a baby as garbage before birth why not after birth? For that matter, if it's OK to kill a baby before birth why isn't it OK to kill a baby after the birth has taken place? I can't answer that question. By the same token, if it's wrong, as almost everyone in our society will insist, if it's wrong to kill a baby after he is born, then it's also wrong to kill a baby before he is born. We are not transformed from garbage into human beings merely by the process of birth. Neither are we transformed from garbage into human beings simply by attaining some nice round-numbered month of gestation, like three months or six months.

To argue that we are transformed into human beings merely by birth or attainment of some certain stage of gestation is illogical. Not only that it's dishonest. Because of this massive dishonesty in our society, a vast, hideous slaughter is taking place in every large community of our country. Human life is a continuant from the beginning to the natural end. How could it be otherwise? That's self-evident, perfectly self-evident. The off-spring of human beings are human beings. They can't be cows or chickens or pigs; they're not toothpaste tubes or coke bottles. The off-spring of human beings are human beings, and that's evident even to Mike Dukakis.

Now we come to the catch: it is convenient to modern society to deny the humanity of prenatal infants. A recent case illustrates the point. A young lady in Indiana found out that she was pregnant. She did not want to be pregnant just now because it would mean she could not wear her favorite bathing suit this summer. She couldn't cut quite the figure at the beach that she had planned for this summer. So she decided to have an abortion. The child's father sought an injunction and, thanks to the help of Jim Bopp and his law firm, an injunction was secured. But the woman was determined that she was going to have her way. Indeed she did, and no doubt she looks very svelte on the beach this summer. God only knows what her child looks like.

So it seems that whether it is prior to birth or following birth, more and more babies are ending up as garbage. Ending up as garbage. But there is hope. There is hope. That's why we're here. So many wonderful people here tonight. Cathy Clark and all of you. I've met people from the West Coast, from the South, the East and the Middle. From every part of this country, you've come all the way out to Washington, let's face it, at considerable expense. It wasn't paid by the government, was it, as when I travel? You had to pay it yourself, and it hurt in most cases. You've given up family activities, and other things that are pretty important to come here. But there's hope because of you, and thank God for you. Thanks to each and every one of you there's hope.

That's why I'm so very honored to speak with you this evening. Because truly, I say this with the greatest sincerity as a student of history, you are the leaders of the most important grassroots movement in the nation's history. We have had other important grassroots movements. The revolution for the independence of this country was a grassroots movement. Remember, it began as a minority movement. Remember that the rebels, if you will, the disaffected, were sneered at and probably spat upon and ridiculed and in many cases much worse, in the case of those who suffered at the hands of the Tories. But the point is they were a minority. All great revolutions begin amongst a minority.

The great struggle against that other ugly institution, human slavery, began as a minority movement. It took decades and it took generations and people were told to be quiet and not to raise an impolite subject that makes people uncomfortable.

So people believe me, American patriots ave been through before what you're going through today, notwithstanding all that they accomplished for this country. And likewise those who fought for civil rights in this century, indeed, in this generation have been through it. Notwithstanding the great accomplishments of all of those grassroots movements, by far this is even more important and more significant in the history of our country and indeed the history of our civilization.

Each of these grassroots movements has brought forward leaders, previously unknown, previously untested, just as this one has. What a great honor it is for me to be amongst them, to be amongst you here tonight. You're giving yourselves unsparingly like our forebears, to secure justice for all humans. In our time, I assure you, in our time, in our cause, we too shall succeed. We shall succeed because, like the earlier causes, our cause is just. We shall overcome. Yes, we, too, shall overcome. We shall win in the end.

Our adversaries are clever. The National Abortion Rights Action League, NARAL, has chosen the figure of the statue of liberty as its emblem. How desperately they want to associate themselves with cherished symbols and yet how ironic they should have chosen the Statue of Liberty. For no group is more cruel or more callous toward those littlest of all immigrants who "yearn to breathe free," than is NARAL and its members.

Unfortunately, those who advocate abortion and those who, just as unfortunately, accommodate abortion—and to accommodate is as bad as to advocate—unfortunately, those who advocate and accommodate abortion have put liberty at war with life. What a strange concept, liberty at war with life! It runs against everything on which this nation is founded. Certainly our forefathers never meant liberty to be at war with life. They often used that phrase in the early day of this country. Life and liberty. Not one, not the other, not one without the other, not one or the other, but together. Coequal and inseparable, life and liberty.

How strange it is that so many contemporary politicians will stand up on the Fourth of July and rise to the greatest heights of patriotic oratory in proclaiming the wisdom of the Declaration of Independence and the eternal truths which it so beautifully enunciates, not the least of which is that life and liberty are rights in which we are endowed by our Creator. And that it is the purpose of government to secure to protect those rights. Then on July 5 they stand up and make excuses for the killing of innocent, helpless prenatal human beings. How ironic, how dishonest, how tragic, how cynical, how cowardly.

The founding fathers saw that liberty and life are inseparable rights in which we are endowed by our creators. Of course, even they weren't perfect men. There was one grievous exception to their concept of liberty as it was put into practice. We don't want to pretend it wasn't there. It was there, let's acknowledge it, because it's important to our struggle. They made an exception for black human beings. They permitted the enslavement of human beings, allowed human beings to be treated like animals—bought and sold like property. That was a grievous chapter in our nation's history, but we overcame it. Thank God, we brought justice at last through a grassroots movement just like this.

I would say that abortion is even worse than slavery. Slavery was despicable, but at least slavery offered life—not much more, but life—and where there is life there is hope. But abortion offers only death and despair. The abortion advocates and the abortion apologists have put liberty at war with life. Because of this grim, ghastly war twenty million innocent, helpless human beings have been slaughtered. Twenty million prenatal infants.

But we shall make peace, you and I. That's our ultimate purpose. We shall make peace between liberty and life. That's what we're struggling for, each of us in this room and every one of our comrades across this country and around this world. We seek to restore peace between liberty and life so the slaughter of prenatal infants will stop.

We're making progress. We're making progress by relentlessly beating against this edifice, this ugly, hideous edifice of abortion. Let me just recount some of the high-points of that progress. The annual Hyde Amendments to the various appropriations bills have by now saved literally millions of human lives. The Dornan amendment, which put the Department of Defense out of the business of performing abortions in military facilities, has saved at least 10,000 lives per year for the last decade.

We now have federal consicence clauses that protect professional personnel and other personnel who don't want to be involved in abortion. We've confirmed three Supreme Court Justices who we think and hope and believe are likely to vote to overturn *Roe* v. *Wade* when the right case presents itself. Justice O'Connor encourages us when she says "there is no justification in law or logic"—that covers the bases pretty well—"there is no justification in law or logic for the trimester framework adopted in Roe."

We have a pro-life President, who is the first President ever to author right to life legislation. A President who frequently upholds the right to life movement and its leaders and workers in national addresses and ceremonies. We have a growing number of states with informed consent and/or parental consent laws. We've got thousands—this is one I know really makes you feel good because it makes me feel so good—we've got thousands of crisis pregnancy centers around this country manned by tens of thousands of wonderful volunteers. Tens of thousands of wonderful volunteers bringing practical alternatives to women with difficulties.

We even have, if you can believe it, the beginnings, according to a *Time* magazine article of July 4, the beginnings of a reconsideration of their pro-abortion positions of many mainline Protestant churches.

Yes, we are relentless, and we will remain relentless and we will beat relentlessly against this edifice of abortion until it falls. One day soon, my friends, it shall fall. It will come crashing down in a cloud of dust. Whether that historic event happens sooner or later depends perilously, precariously, on the election coming in November.

In Michael Dukakis, the abortion party has found their ideal candidate. Mike Dukakis is a committed advocate of abortion on demand as a matter of public policy. It dosn't matter what he says about how he feels personally. If he doesn't have the guts and the principles to put his beliefs into action, then he is something less than the kind of man that we want for President of this country.

In 1970, three years before *Roe* v. *Wade*, so eager was Mike Dukakis to begin the slaughter, that as a state legislator in Massachusetts he introduced a bill, at the request of the arch-abortionist Bill Baird, that would have overturned all of the abortion laws in Massachusetts which restricted and banned that practice. In 1970. Eighteen years ago. So proud was he of that association with Bill Baird, that the bill which Dukakis introduced bears at the top "introduced at the request of William Baird."

My friends, no party has ever nominated a candidate more committed to abortion than this Michael Dukakis. Even Jimmy Carter managed to emit a few pro-life squeaks every now and then. In 1980, the Democrats tried to write a plank into their platform that would have committed the federal government to full funding of abortion on demand for everyone and anyone who wanted such an abortion. To his credit, Jimmy Carter put that one to rest before it became published. But get this: do you know who wrote it? Do you know who wrote that plank? Does anyone know? Can I hear a name? Susan Estrich. Do you know who Susan Estrich is? She's a bright young Harvard graduate of the kind that Mike Dukakis would like to flood into the executive and judicial departments of this government, and she is functioning today ever so effectively as Mike Dukakis' campaign manager.

Mike Dukakis, as governor, once held up the entire state budget because the legislature had sent him a bill with a Hyde-like provision that would ban abortion funding. On January 22, 1986, just two years ago, he marked the anniversary of the *Roe* v. *Wade* decision at a pro-abortion party in Boston by declaring, "I don't know when life begins. I'm not sure I ever will."

We, too, doubt that he ever will. Were he to be elected President, we doubt that his attorney ever would. We doubt his secretary of HHS ever would. We know his nominees to the Supreme Court never would. We know that they never would.

Therefore, for pro-lifers, the number one priority in this season must be defeat of this dedicated pro-abortion candidate. The next President will, like all Presidents, have the power to name a great many members of the federal judiciary, the lower courts. The next President almost certainly, I can't see how it can be avoided, will name two or three members of the Supreme Court. The next President will also have the power, as do all Presidents, to shape public opinion on the issue of respect for human life, just as President Reagan has used the bully pulpit of the White House to recognize and to encourage us in the pro-life movement.

But contrary to what President Reagan has done, if Mike Dukakis floods the executive and the judiciary with the Susan Estriches of this world, you can be sure that all of the hard-won gains of the last fifteen years will be very quickly swept away.

Michael Novak calls the choice of President "electing our King." In a sense that's true, because when we elect this person, we are saying a lot about our beliefs, our values, as well as about what specific programs and policies we wish pursued.

I gave Mike Dukakis some time, I think out of fairness I should give George Bush some time. Just to be balanced, you know. Fairness doctrine. Bearing in mind, of course, that I'm a Republican. George Bush and the Republican platform are of one mind on the sanctity of prenatal life and the sanctity of life. They proclaim unequivocally, clearly, and publicly for the record: "The unborn child has a fundamental individual right to life which cannot be infringed. We therefore reaffirm our support for a human life amendment to the Constitution."

For good or bad, that election is coming and we can't know the outcome just yet. Whatever the outcome, a new chapter will be opened in the right to life struggle. Whatever may be written in that chapter, good or ill, our commitment is a long term commitment. Our commitment is an unshakable commitment. We will continue relentlessly. We shall succeed. We shall succeed because our cause is just, and we shall never rest until we succeed.

Let me close by sharing a little insight from an earlier civil rights struggle—the struggle against slavery, and the great war which arose out of that struggle. In May of 1865, President Lincoln boarded a steamer here in Washington and steamed down the Potomac. The war was coming to a close. Richmond would soon fall, and six days after that at Appomatox, General Lee's forces would agree to an end to the hostilities. Lincoln steamed down the Potomac, out into the Chesapeake Bay, down the Bay quite some way, and then turning north again up the James River to the headquarters camp of his forces.

General Grant who reported the incident said that Lincoln seemed more solemn than usual that night as he sat around the campfire, occasionally brushing the smoke away from his face. The President, General Grant said, spoke of the appalling difficulties the nation had met in bringing the war close to a successful conclusion.

After Lincoln had recounted these appalling difficulties, General Grant looked him in the eye and said: "Mr. President, did you at any time ever doubt the final success of the cause?" Lincoln, leaning forward in his camp chair, and with an emphatic gesture of his hand replied: "Never, never for one moment."

Never for one moment. My colleagues, we in our time, and we in our struggle, despite the appalling difficulties, have that same firm, unshakable faith. We have that same unshakable faith in the final success of our cause. Our cause, too, will triumph. We will bring peace. Peace will come. Peace will come between liberty and life. Human babies will be safe once again. Thank you and God bless you in your work.●

CAPITAL GAINS TAX RESTRICTS GROWTH

● Mr. BOSCHWITZ. Mr. President, I rise today to describe for my colleagues a recent column by Lindley H. Clark, Jr., entitled "Hardly Anyone Seems To Understand Capital Gains," which appeared in the Wall Street Journal. The column relates the common stereotype that reduced capital gains tax rates benefit only the wealthy. Recently Gov. Michael Dukakis criticized proposals to reduce the tax on capital gains as "feathering a nest" for the rich. Of course, this characterization is absurd.

As Mr. Clark notes in his column, a recent study by Prof. Lawrence Lindsey of Harvard University found that most recipients of capital gains tax have incomes of $50,000 or less. According to the Lindsey study, taxpayers with incomes under $30,000 saw their tax on capital gains triple under the Tax Reform Act.

The primary argument used by opponents of reduced capital gains tax rates is that tax revenues are lost. While capital gains tax revenues skyrocketed just before the Tax Reform Act took effect while rates were low, most studies indicate that because of higher rates, future tax revenues attributable to capital gains will be flat. The tax revenues in several States, including Massachusetts, New York, and California, have been lower than projected because of a decline in the taxes from capital gains

As Mr. Clark notes, realization and taxation of capital gains are at the discretion of taxpayers. Confronted with the substantial increase in the tax rate for capital gains included in the Tax Reform Act, many investors will hold onto their assets in hopes the rates will decline in a future year.

The real irony of the increase in the tax on capital gains is the effect it will have on entrepreneurs and other risk-takers. When all forms of income are taxed alike, there is no incentive to take risks on an investment with long-term potential. When much of the gains from a long-term investment is eroded by inflation, it is particularly unfair to pay an excessive capital gains tax, as well.

Entrepreneurs also suffer from higher tax rates on capital gains. Clark notes, the taxpayer is better off taking a nice safe management position with a steady income, rather than gamble on starting a new business where the tax consequence of succeeding is so punitive. This circumstance cannot help but reduce our competitiveness. Moreover, it will open the way to more foreign investment since most of our major trading partners do not tax capital gains at all.

Mr. President, slowly but surely the adverse consequence of our decision eliminating the capital gains exclusion

from the Tax Code is becoming clear. Although it is too late this year to act on this issue, I am hopeful that Congress will move quickly on this issue when a new session begins in January. We owe it not only to those people who have invested time and capital in businesses built over a lifetime, but also to those budding entrepreneurs who are weighing the advantages and disadvantages of starting a new business.

Mr. President, I ask that a copy of the Clark column be inserted in the RECORD at the end of my statement.

The article follows:

HARDLY ANYONE SEEMS TO UNDERSTAND CAPITAL GAINS

(By Lindley H. Clark, Jr.)

In another attack on George Bush last week, Michael Dukakis said, "He's proposed a five-year, $40 billion capital-gains giveaway. Most of it will go to people making more than $200,000 a year. That's not building an economy; that's feathering a nest."

It's too much to expect a great deal of logic in political discussions, especially when they're about business and economics. Perhaps it's best to recall that special treatment of capital gains was an effort to make our economy function better—it prospers in large part because some people are willing to risk money developing products and processes.

Our ordinary income-tax system discourages risk-taking. Paul A. Samuelson of the Massachusetts Institute of Technology put it this way in his textbook. "Economics"; "Taxing a retired innovator's income may seem to have no distorting effects. But we must not forget the young innovator who can then no longer look forward to reaping a tidy sum from his new ideas. He may decide to take that civil service job or remain thirteenth vice-president of a bank. You cannot tax the results of an old innovation without somewhat affecting the prospects of an as-yet-unborn innovation.

"If Congress taxes risky activities more heavily than routine activities, what can any reasonable person expect to happen? People will naturally tend to avoid venturesome fields and to gravitate toward routine, steady ones."

Some other industrial nations have attacked this problem by taxing capital gains lightly or not at all. The U.S. for many years taxed capital gains less heavily than ordinary income but imposed a strict limit on the deduction of the losses that normally go along with risk-taking.

But the 1986 revenue act, which was advertised as monumental tax reform, taxed capital gains as ordinary income. Well, that's not quite true. The law retained limitations on the deduction of losses, so, as matters now stand, capital gains are taxed more heavily than ordinary income. It's a good plan to steer more young people toward careers as 13th vice presidents.

The 1986 act was supposed to be a Reagan administration achievement, but the Republicans seem to recognize that it had its limitations. The GOP campaign platform doesn't refer to the 1986 act when it calls for a cut in the tax rate on long-term capital gains "to promote investment in jobs and to raise revenue for the federal government." Instead, in a nice bit of bipartisanship, it refers to a Carter-era capital-gains rate cut as well as the cut adopted in the first year of the Reagan administration. As a result of these cuts, the platform says, capital-gains tax revenues rose 184% from 1978 to 1985.

Even some friends of Gov. Dukakis appear to believe that something went wrong. Investment banker Felix Rohatyn, who might be treasury secretary in a Dukakis administration, has suggested a lower tax rate on long-term capital gains.

The 1986 act did promote a short-term burst of revenue. The law went into effect Jan. 1, 1987, and there was a rush to realize gains before the higher rate took effect. The rate for the average capital-gains taxpayer jumped to 21% from 9%, and realizations in 1986 were nearly double the 1985 level.

In fact, the revenue increase from the capital-gains tax rise looks like a one-shot affair, due entirely to the rush to beat the increase. Lawrence Lindsey of Harvard examined several economic models and concluded, "The prospects that the higher marginal tax rates on capital gains in the new tax law will produce more capital-gains-tax revenue seem remote. . . . The response of gains to permanent tax-rate changes produces a smaller amount of revenue in four of the five models and static revenue in the fifth."

What tax planners often seem to forget is that realization and taxation of capital gains are largely at the discretion of the taxpayer. In an average year, only a small portion of the accrued gain will actually be realized. Faced with what Prof. Lindsey says may well have been the largest capital-gains tax-rate increase since the advent of the income tax in 1913, it would be normal for many taxpayers to opt to hold onto their assets a bit longer.

The capital-gains tax-rate increase, ironically enough, came at a time when increasing U.S. competitiveness had seemed to have become a bipartisan cause. Last October's stock-market crash led to a variety of proposals for discouraging "speculation," which is usually the villain when the market drops. Most such proposals were aimed at discouraging speculation without deterring long-term investment.

Gov. Dukakis may be right when he says that most of the benefits of Mr. Bush's capital-gains tax cut would go to taxpayers with incomes over $200,000. However, he may have a hard time selling that argument politically. As Prof. Lindsey says, most of the individual recipients of capital gains have incomes of less than $50,000 a year. Taxpayers with incomes under $30,000 generally saw a tripling of their capital-gains tax rates.

The politicians who drafted the 1986 act thus committed one error their predecessors avoided. Experimentation with capital-gains law had been common for many years. In another study, Prof. Lindsey considered the period 1965–1982. Changes in the law occurred, on the average, every other year. However, "in the case of taxpayers earning under $50,000 . . . the variation in tax rates was quite small.

"Over that 18-year period, the average marginal tax rate on capital gains for these taxpayers varied between a high of 13.8% in 1969 and a low of 10.6% in 1979." Thus, for the vast majority of capital-gains recipients, tax-rate rises such as they saw in 1986 were without precedent.

The 1986 act thus was bad politics as well as bad economics. Norman Ture, who was an architect of the Reagan administration supply-side tax cuts, summed it up this way at a Cato Institute conference:

"Implementation of the entrepreneurial zest for starting new businesses and for risky, innovative ventures requires the infusion of capital, very often supplied by outside investors. For both outside investors and entrepreneurs, the reward sought is primarily an increase in the value of the equity investment in the venture.

"For outside investors, in particular, it is important to be able to realize the appreciated capital and to transfer it into promising new ventures. Raising the tax on capital gains blunts the inducement for undertaking these ventures in the first place."

It's surely no way to make the U.S. more competitive.●

ADDITIONAL TECHNICAL AND OTHER CORRECTIONS TO TECHNICAL CORRECTIONS ACT

● Mr. BAUCUS. Mr. President, Senator PACKWOOD and I are offering an amendment to S. 2238, the Technical Corrections Act of 1988, on behalf of the Committee on Finance. This amendment provides a number of significant improvements in the tax law. The amendment extends or improves many important expiring tax incentive provisions, including provisions designed to stimulate education, housing, research, and jobs. It makes a number of substantive corrections and improvements in the tax system, including adoption of a taxpayer bill of rights. As the Finance Committee drafted this bill, we made sure that the package was revenue neutral both in fiscal year 1989 and over a 3-year budget period. We worked in a consensus, bipartisan manner, and we have produced a balanced package that we believe merits the support of the Senate. We hope that we can act promptly to pass this bill on the floor in the limited time that is likely to be available.

Mr. President, I ask that the text of the amendment, along with a staff explanation of the amendment, be printed in the RECORD.

The material follows:

On page 758, strike lines 9 through 15.

On page 758, line 16, strike "(B)" the first place it appears and insert "(A)".

On page 758, line 19, strike "(C)" the first place it appears and insert "(B)".

On page 758, line 24, strike "(D)" the first place it appears and insert "(C)".

On page 759, line 1, strike "(E)" and insert "(D)".

On page 780, line 16, strike "Paragraph (2) of section" and insert "Section".

On page 780, line 18, strike "sentence" and insert "paragraph".

On page 780, line 19, insert "(3)" before "In".

On page 780, lines 19 and 20, strike "the corporation referred to in the preceding sentence" and insert "a qualified corporation".

On page 857, strike lines 17 through 19, and insert:

(13) Subparagraph (D) of section 621(f)(2) of the Reform Act is amended—

(A) by striking out "or reorganization", and

(B) by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, in applying section 382

(as so in effect), warrants shall not be treated as stock.".

On page 865, line 7, insert "(A)" after "(5)".

On page 865, line 9, strike "(A)" and insert "(i)".

On page 865, line 13, strike "(B)" and insert "(ii)".

On page 865, between lines 16 and 17, insert:

(B) The amendment made by subparagraph (A)(ii) shall not apply to any reorganization if before June 10, 1987—

(i) the board of directors of a party to the reorganization adopted a resolution to solicit shareholder approval for the transaction, or

(ii) the shareholders or the board of directors of a party to the reorganization approved the transaction.

On page 868, line 25, strike "June 11, 1987" and insert "June 22, 1988, except that such amendment shall not apply to any exchange pursuant to any reorganization for which a plan of reorganization was adopted before June 22, 1988".

On page 909, line 13, strike the end quotation marks.

On page 909, between lines 13 and 14, insert:

"(iii) REGULATIONS.—Under regulations, payments to the real estate investment trust under an agreement described in clause (ii) which relates to indebtedness incurred to acquire or carry real estate assets may be treated as income which qualifies under paragraph (2) and as security for purposes of paragraph (4)(A).".

On page 945, lines 14 and 15, strike "(in a taxable year beginning after December 31, 1986)".

On page 945, line 24, strike "October 16, 1987" and insert "December 31, 1987".

On page 974, strike lines 4 through 7, and insert:

(B) The amendment made by subparagraph (A) shall take effect as if included in the amendments made by section 806 of the Reform Act, except that section 806(e)(1) shall be applied by substituting "December 31, 1987" for "December 31, 1986". For purposes of section 806(e)(2) of the Reform Act—

On page 986, strike lines 14 through 19, and insert:

"(C) ELECTION MADE BY EACH MEMBER.—In the case of a parent-subsidiary controlled group, any election under this section shall be made separately by each member of such group."

On page 1013, between lines 7 and 8, insert:

"(9) Section 831(b) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"'(3) LIMITATION ON USE OF NET OPERATING LOSSES.—For purposes of this part, except as provided in section 844, a net operating loss (as defined in section 172) shall not be carried—

"'(A) to or from any taxable year for which the insurance company is not subject to the tax imposed by subsection (a), or

"'(B) to any taxable year if, between the taxable year from which such loss is being carried and such taxable year, there is an intervening taxable year for which the insurance company was not subject to the tax imposed by subsection (a).'"

On page 1070, between lines 16 and 17, insert:

(16) Sections 406(c) and 407(c) of the 1986 Code are each amended—

(A) by striking out "subsections (a)(2) and (e) of section 402, and section 403(a)(2)" and inserting in lieu thereof "section 402(e)", and

(B) by striking out "OF CAPITAL GAIN PROVISIONS AND" in the headings thereof.

On page 1097, line 11, strike "Section 6652(l)(2)(B)" and insert "Section 6652(k)(2)(B)".

On page 1107, beginning with line 12, strike all through page 1108, line 9, and insert:

(34) Section 89(l)(2) of the 1986 Code is amended by striking out "6652(l)" and inserting in lieu thereof "6652(k)".

On page 1138, line 13, strike "the" and insert "the receipt of any distribution in liquidation in".

On page 1138, line 21, strike "liquidation occurs" and insert "distribution is received".

On page 1201, after line 24, insert:

(37)(A) Paragraph (2) of section 1295(b) of the 1986 Code is amended by adding at the end thereof the following new sentence: "To the extent provided in regulations, such an election may be made later than as required by the preceding sentence in cases where the company failed to make a timely election because it reasonably believed it was not a passive foreign investment company."

(B) The period during which an election under section 1295(b) of the 1986 Code may be made shall in no event expire before the date 60 days after the date of enactment of this Act.

On page 1209, between lines 6 and 7, insert:

(15) Section 861(a)(2)(C) of the 1986 Code is amended by striking out "section 243(d)" and inserting in lieu thereof "section 243(e)".

On page 1279, strike lines 3 through 8.

On page 1279, line 9, strike "(D)" and insert "(C)".

On page 1324, between lines 7 and 8, insert:

(21) Section 2652 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(d) EXECUTOR.—For purposes of this chapter, the term 'executor' has the meaning given such term by section 2203."

On page 1339, between lines 10 and 11, insert the following new subsections:

(s) NOTICE OF LIEN ON PERSONAL PROPERTY.—

(1) Subsection (f) of section 6323 of the 1986 Code is amended—

(A) by inserting ", except that State law merely conforming to or reenacting Federal law establishing a national filing system does not constitute a second office for filing as designated by the laws of such State" after "situated" in paragraph (1)(A)(ii), and

(B) by adding at the end thereof the following new paragraph:

"(5) NATIONAL FILING SYSTEMS.—The filing of a notice of lien shall be governed solely by this title and shall not be subject to any other Federal law establishing a place or places for the filing of liens or encumbrances under a national filing system."

(2) The amendments made by this subsection shall take effect on the date of the enactment of this Act.

(t) EFFECT OF HONORING LEVY.—

(1) Subsection (d) of section 6332 of the 1986 Code is amended by inserting "and any other person" after "delinquent taxpayer".

(2) The amendment made by this subsection shall apply to levies issued after the date of the enactment of this Act.

(u) COLLECTION AFTER COMMENCEMENT OF JUDICIAL PROCEEDINGS.—

(1) The last sentence of section 6502(a) of the 1986 Code is amended to read as follows: "If a timely proceeding in court for the collection of a tax is commenced, the period during which such tax may be collected by levy shall be extended and shall not expire until the liability for the tax (or a judgment against the taxpayer arising from such liability) is satisfied or becomes enforceable."

(2) The amendment made by this subsection shall apply to levies issued after the date of the enactment of this Act.

On page 1352, between lines 11 and 12, insert:

(3) Section 1278(b) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(4) BASIS ADJUSTMENT.—The basis of any bond in the hands of the taxpayer shall be increased by the amount included in gross income pursuant to this subsection."

On page 1375, strike lines 1 through 11.

On page 1426, line 23, strike "distributees" and insert "corporations".

On page 1427, line 1, insert "which included the distributees" after "group".

On page 1427, lines 9 and 10, strike the commas.

On page 1431, strike lines 11 through 16, and insert:

"(3) SHORTER PERIOD WHERE CORPORATIONS NOT IN EXISTENCE FOR 5 YEARS.—If either of the corporations referred to in paragraph (1) was not in existence throughout the 5-year period referred to in paragraph (1), the period during which such corporation was in existence (or if both, the shorter of such periods) shall be substituted for such 5-year period."

On page 1436, between lines 18 and 19, insert the following new subsection:

(s) AMENDMENTS RELATED TO SECTION 10502 OF THE ACT.—

(1) Section 4093 of the 1986 Code is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and by inserting after subsection (c) the following new subsection:

"(d) CERTAIN AVIATION FUEL SALES.—Under regulations prescribed by the Secretary, the Leaking Underground Storage Tank Trust Fund financing rate under section 4091 shall not apply to aviation fuel sold for use or used as supplies for vessels or aircraft (within the meaning of section 4221(d)(3))."

(2) Subparagraph (B) of section 6427(l)(3) of the 1986 Code (relating to no refund of Leaking Underground Storage Tank Trust Fund financing tax) is amended by inserting "(except as supplies for vessels or aircraft within the meaning of section 4221(d)(3))" after "aircraft".

On page 1441, strike lines 1 through 3 and insert:

"(I) the amount determined under section 412(c)(7)(A)(i) with respect to the plan, over".

On page 1441, beginning with line 20, strike out through page 1442, line 12, and insert:

"(D) CERTAIN SPUN-OFF PLANS NOT TAKEN INTO ACCOUNT.—

"(i) IN GENERAL.—A plan involved in a spin-off which is described in clause (ii), (iii), or (iv) shall not be taken into account for purposes of this paragraph, except that the amount determined under subparagraph (C)(ii) shall be increased by the amount of assets allocated to such plan.

"(ii) PLANS TRANSFERRED OUT OF CONTROLLED GROUPS.—A plan is described in this clause if, after such spin-off, such plan is maintained by an employer who is not a member of the same controlled group as the employer maintaining the original plan.

"(iii) PLANS TRANSFERRED OUT OF MULTIPLE EMPLOYER PLANS.—A plan as described in this clause if, after the spin-off, any employer maintaining such plan (and any member of the same controlled group as such employer) does not maintain any other plan remaining after the spin-off which is also maintained by another employer (or member of the same controlled group as such other employer) which maintain the plan in existence before the spin-off.

"(iv) TERMINATED PLANS.—A plan is described in this clause if, pursuant to the transaction involving the spin-off, the plan is terminated.

"(v) CONTROLLED GROUP.—For purposes of this subparagraph, the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414."

On page 1443, between lines 15 and 16, insert:

(3)(A) Subparagraph (C) of section 412(l)(3) of the 1986 Code is amended—

(i) by striking out "October 17, 1987" in clause (i) and inserting in lieu thereof "October 29, 1987", and

(ii) by striking out "October 16, 1987" in clause (iii) and inserting in lieu thereof "October 28, 1987".

(B) Subparagraph (B) of section 302(d)(3) of the Employee Retirement Income Security Act of 1974 is amended—

(i) by striking out "October 17, 1987" in clause (i) and inserting in lieu thereof "October 29, 1987", and

(ii) by striking out "October 16, 1987" in clause (iii) and inserting in lieu thereof "October 28, 1987".

On page 1444, beginning with line 17, strike out all through page 1484, line 3.

On page 1493, beginning with line 14, strike through page 1494, line 5, and redesignate subtitles B, C, and D as subtitles A, B, and C, respectively.

On page 1536, line 17, strike "shall" and insert "may".

On page 1540, line 5, strike "(11)" and insert "(12)".

On page 1543, line 11, insert "(or if later the effective date of such rules)" after "plans".

On page 1546, line 23, insert "and to take into account any right of recovery (whether or not exercised) under section 2207B" after "applied".

On page 1551, strike lines 12 through 14 and insert:

"(II) has a fixed maturity date,

On page 1551, line 24, insert "except in a case where such indebtedness is in default as to interest or principal," before "such indebtedness".

On page 1552, lines 1, 2, and 3, strike "(other than in a case where the indebtedness is in default as to interest or principal)".

On page 1555, line 16, insert "(or a revocable trust)" after "will".

On page 1556, line 9, strike the end quotation marks.

On page 1556, between lines 9 and 10, insert:

"(e) NO RIGHT OF RECOVERY AGAINST CHARITABLE REMAINDER TRUSTS.—No person shall be entitled to recover any amount by reason of this section from a trust to which section 664 applies (determined without regard to this section)."

On page 1556, between lines 13 and 14, insert:

(e) TREATMENT OF CONSIDERATION.—

(1) IN GENERAL.—Section 2036(c)(5) of the 1986 Code is amended by striking out "the value of the retained interest" and inserting in lieu thereof "any consideration received".

(2) STUDY.—The Secretary of the Treasury or his delegate shall conduct a study as to the manner in which the consideration taken into account under section 2036(c)(5) of the 1986 Code is computed. The Secretary shall report the results of such study not later than January 1, 1990, to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

On page 1556, line 14, strike "(e)" and insert "(f)".

On page 1557, between lines 4 and 5, insert:

(4) CORRECTION PERIOD.—If section 2036(c)(1) of the 1986 Code would (but for this paragraph) apply to any interest arising from a transaction entered into during the period beginning after December 17, 1987, and ending before January 1, 1990, such section shall not apply to such interest if during such period actions are taken as are necessary to have such transaction (and any such interest) included in the exceptions under section 2036(c)(6) of the 1986 Code (as added by subsection (b)).

On page 1622, after line 16, add the following new titles:

TITLE VII—ADDITIONAL CORRECTIONS AND MODIFICATIONS

Subtitle A—Provisions That Close Loopholes

SEC. 700. AMOUNT OF CORPORATE ESTIMATED TAX INSTALLMENT REDUCTION RECAPTURE INCREASED.

(a) IN GENERAL.—Section 6655(e)(1) of the 1986 Code (relating to lower required installment where annualized income installment or adjusted seasonal installment is less than amount determined under subsection (d)) is amended by striking out "90 percent" and inserting in lieu thereof "100 percent".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to installments required to be made after September 30, 1988.

SEC. 701. TREATMENT OF MODIFIED ENDOWMENT CONTRACTS.

(a) DISTRIBUTION RULES.—

(1) IN GENERAL.—Subsection (e) of section 72 of the 1986 Code (relating to amounts not received as annuities) is amended by adding at the end thereof the following new paragraph:

"(10) TREATMENT OF MODIFIED ENDOWMENT CONTRACTS.—

"(A) IN GENERAL.—Notwithstanding paragraph (5)(C), in the case of any modified endowment contract (as defined in section 7702A)—

"(i) paragraphs (2)(B) and (4)(A) shall apply, and

"(ii) in applying paragraph (4)(A), 'any person' shall be substituted for 'an individual'.

"(B) TREATMENT OF CERTAIN BURIAL CONTRACTS.—Notwithstanding subparagraph (A), paragraph (4)(A) shall not apply to any assignment (or pledge) of a modified endowment contract if such assignment (or pledge) is solely to cover the payment of expenses referred to in section 7702(e)(2)(C)(iii).

"(C) TREATMENT OF AMOUNTS RETAINED BY INSURER UNDER THE CONTRACT.—Any amount payable or borrowed under a modified endowment contract shall not be included in gross income under paragraph (2)(B)(i) to the extent such amount is retained by the insurer as a premium or other consideration paid for the contract or as principal or interest paid on a loan under the contract."

(2) TECHNICAL AMENDMENT.—Subparagraph (C) of section 72(e)(5) is amended by striking out "Except to the extent" and inserting in lieu thereof "Except as provided in paragraph (10) and except to the extent".

(b) ADDITIONAL TAX.—

(1) IN GENERAL.—Section 72 of the 1986 Code (relating to annuities; certain proceeds of endowment and life insurance contracts) is amended by redesignating subsection (v) as subsection (w) and by inserting after subsection (u) the following new subsection:

"(v) 10-PERCENT ADDITIONAL TAX FOR TAXABLE DISTRIBUTIONS FROM MODIFIED ENDOWMENT CONTRACTS.—

"(1) IMPOSITION OF ADDITIONAL TAX.—If any taxpayer receives any amount under a modified endowment contract (as defined in section 7702A), the taxpayer's tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of such amount which is includible in gross income.

"(2) SUBSECTION NOT TO APPLY TO CERTAIN DISTRIBUTIONS.—Paragraph (1) shall not apply to any distribution—

"(A) made on or after the date on which the taxpayer attains age 59½,

"(B) which is attributable to the taxpayer's becoming disabled (within the meaning of subsection (m)(7)), or

"(C) which is part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the taxpayer or the joint lives (or joint life expectancies) of such taxpayer and his beneficiary."

(2) TECHNICAL AMENDMENT.—Subparagraph (C) of section 26(b)(2) of the 1986 Code is amended by striking out "or (q)" and inserting in lieu thereof "(q), or (v)".

(c) MODIFIED ENDOWMENT CONTRACT DEFINED.—

(1) IN GENERAL.—Chapter 79 of the 1986 Code is amended by inserting after section 7702 the following new section:

"SEC. 7702A. MODIFIED ENDOWMENT CONTRACT DEFINED.

"(a) GENERAL RULE.—For purposes of section 72, the term 'modified endowment contract' means any contract meeting the requirements of section 7702—

"(1) which—

"(A) is entered into on or after June 21, 1988, and

"(B) fails to meet the 7-pay test of subsection (b), or

"(2) which is received in exchange for a contract described in paragraph (1).

"(b) 7-PAY TEST.—For purposes of subsection (a), a contract fails to meet the 7-pay test of this subsection if the accumulated amount paid under the contract at any time during the 1st 7 contract years exceeds the sum of the net level premiums which would have been paid on or before such time if the contract provided for paid-up future benefits after the payment of 7 level annual premiums.

"(c) COMPUTATIONAL RULES.—

"(1) IN GENERAL.—Except as provided in this subsection, the determination under subsection (b) of the 7 level annual premiums shall be made—

"(A) as of the time the contract is issued, and

"(B) by applying the rules of section 7702(b)(2) and of section 7702(e) (other than paragraph (2)(C) thereof), except that—

"(i) the death benefit provided for the 1st contract year shall be deemed to be provid-

ed until the maturity date without regard to any scheduled reduction after the 1st 7 contract years, and

"(ii) except as otherwise provided by the Secretary, the mortality charges used in such determination shall be the mortality charges specified in the prevailing commissioners' standard tables (as defined in section 807(d)(5)) as of the time the contract is issued or materially changed.

"(2) REDUCTION IN BENEFITS DURING 1ST 7 YEARS.—

"(A) IN GENERAL.—If there is a reduction in benefits under the contract within the 1st 7 contract years, this section shall be applied as if the contract had originally been issued at the reduced benefit level.

"(B) REDUCTIONS ATTRIBUTABLE TO NONPAYMENT OF PREMIUMS.—Any reduction in benefits attributable to the nonpayment of premiums due under the contract shall not be taken into account under subparagraph (A) if the benefits are reinstated within 180 days after the reduction in such benefits.

"(3) TREATMENT OF MATERIAL CHANGES.—

"(A) IN GENERAL.—If there is a material change in the benefits under (or in other terms of) the contract which was not reflected in any previous determination under this section, for purposes of this section—

"(i) such contract shall be treated as a new contract entered into on the day on which such material change takes effect, and

"(ii) appropriate adjustments shall be made in determining whether such contract meets the 7-pay test of subsection (b) to take into account the cash surrender value under the contract.

"(B) TREATMENT OF CERTAIN INCREASES IN FUTURE BENEFITS.—For purposes of subparagraph (A), the term 'material change' includes any increase in future benefits under the contract. The preceding sentence shall not apply in the case of any increase—

"(i) which is attributable to the payment of premiums necessary to fund the lowest level of future benefits payable in the 1st 7 contract years or to crediting of interest or other earnings (including policyholder dividends) in respect of such premiums, or

"(ii) which the Secretary provides in regulations is a de minimis increase which is not to be taken into account as a material change.

"(4) SPECIAL RULE FOR CONTRACTS WITH DEATH BENEFITS UNDER $10,000.—In the case of a contract—

"(A) which provides an initial death benefit of $10,000 or less, and

"(B) which requires at least 20 nondecreasing annual premium payments,

each of the 7 level annual premiums determined under subsection (b) (without regard to this paragraph) shall be increased by $75. For purposes of this paragraph, all contracts issued by the same insurer shall be treated as one contract.

"(d) DISTRIBUTIONS AFFECTED.—If a contract fails to meet the 7-pay test of subsection (b), such contract shall be treated as failing to meet such requirements only in the case of—

"(1) distributions during the contract year in which the failure takes effect and during any subsequent contract year, and

"(2) under regulations prescribed by the Secretary, distributions (not described in paragraph (1)) in anticipation of such failure.

For purposes of the preceding sentence, any distribution which is made within 2 years before the failure to meet the 7-pay test shall be treated as made in anticipation of such failure.

"(e) DEFINITIONS.—For purposes of this section—

"(1) AMOUNT PAID.—

"(A) IN GENERAL.—The term 'amount paid' means—

"(i) the premiums paid under the contract, reduced by

"(ii) amounts to which section 72(e) applies (other than amounts includible in gross income).

"(B) TREATMENT OF CERTAIN PREMIUMS RETURNED.—If, in order to comply with the requirements of subsection (b), any portion of any premium paid during any contract year is returned by the insurance company (with interest) within 60 days after the end of such contract year, the amount so returned (excluding interest) shall be deemed to reduce the sum of the premiums paid under the contract during such contract year.

"(C) INTEREST RETURNED INCLUDIBLE IN GROSS INCOME.—Notwithstanding the provisions of section 72(e), the amount of any interest returned as provided in subparagraph (B) shall be includible in the gross income of the recipient.

"(2) CONTRACT YEAR.—The term 'contract year' means the 12-month period beginning with the 1st month for which the contract is in effect, and each 12-month period beginning with the corresponding month in subsequent calendar years.

"(3) OTHER TERMS.—Except as otherwise provided in this section, terms used in this section shall have the same meaning as when used in section 7702."

(2) CLERICAL AMENDMENT.—The table of sections for chapter 79 of the 1986 Code is amended by inserting after the item relating to section 7702 the following new item:

"Sec. 7702A. Modified endowment contract defined."

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to contracts entered into on or after June 21, 1988.

(2) CERTAIN MATERIAL CHANGES TAKEN INTO ACCOUNT.—A contract entered into before June 21, 1988, shall be treated as entered into after such date if—

(A) on or after June 21, 1988, 1 or more of the future benefits under the contract are increased (or a qualified additional benefit is increased or added) and before June 21, 1988, the owner of the contract did not have a unilateral right under the contact to obtain such increase or addition without providing additional evidence of insurability, or

(B) the contract is converted after June 20, 1988, from a term life insurance contract to a life insurance contract providing coverage other than term life insurance coverage without regard to any right of the owner of the contract to such conversion.

(3) CERTAIN EXCHANGES PERMITTED.—In the case of a modified endowment contract which—

(A) is entered into after June 20, 1988, and before the date of the enactment of this Act, and

(B) is exchanged within 3 months after such date of enactment for a life insurance contract which meets the requirements of section 7702A(b),

the contract which is received in exchange for such contract shall not be treated as a modified endowment contract if gain (if any) is recognized on such exchange.

SEC. 702. REPEAL OF RULES PERMITTING LOSS TRANSFERS BY ALASKA NATIVE CORPORATIONS.

(a) GENERAL RULE.—Nothing in section 60(b)(5) of the Tax Reform Act of 1984 (as amended by section 1804(e)(4) of the Tax Reform Act of 1986)—

(1) shall allow any loss (or credit) of any corporation which arises after April 26, 1988, to be used to offset the income (or tax) of another corporation if such use would not be allowable without regard to such section 60(b)(5) as so amended, or

(2) shall allow any loss (or credit) of any corporation which arises on or before such date to be used to offset disqualified income (or tax attributable to such income) of another corporation if such use would not be allowable without regard to such section 60(b)(5) as so amended.

(b) EXCEPTION FOR NATIVE CORPORATIONS NOT TRANSFERRING LOSSES (OR CREDITS) BEFORE APRIL 26, 1988.—

(1) IN GENERAL.—Subsection (a) shall not apply to any loss (or credit) of any qualified corporation which arises before January 1, 1989, and which is used to offset income assigned (or attributable to property contributed) after April 26, 1988, and before January 1, 1989.

(2) $5,000,000 LIMITATION.—The aggregate amount of losses (and the deduction equivalent of credits as determined in the same manner as under section 469(j)(5)) to which paragraph (1) applies with respect to any qualified corporation shall not exceed $5,000,000. For purposes of this paragraph, a Native Corporation and all other corporations all of the stock of which is owned directly by such corporation shall be treated as 1 qualified corporation.

(3) QUALIFIED CORPORATION.—For purposes of this subsection, the term "qualified corporation" means any Native Corporation which was in existence on April 26, 1988, and any other corporation of which all the stock is owned directly by such Native Corporation if, on or before April 26, 1988, neither—

(A) the Native Corporation, nor

(B) any other corporation with respect to which the Native Corporation at any time owned directly all of the stock of such other corporation,

has engaged in any transaction which would allow any loss or credit (whether arising before, on, or after April 26, 1988) to be used in the manner described in subsection (a)(1).

(c) DISQUALIFIED INCOME DEFINED.—For purposes of subsection (a), the term "disqualified income" means any income assigned (or attributable to property contributed) after April 26, 1988, by a person who is not a Native Corporation or a corporation of which all the stock is owned directly by a Native Corporation.

SEC. 703. MODIFICATION OF DISTILLED SPIRITS TAX CREDIT FOR FLAVORS CONTENT.

(a) IN GENERAL.—Subparagraph (B) of section 5010(c)(2) of the 1986 Code (defining flavors content) is amended by striking out the "and" at the end of clause (i), by redesignating clause (ii) as clause (iii), and by inserting after clause (i) the following new clause:

"(ii) alcohol derived from flavors distilled at a distilled spirits plant, and".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to distilled spirits withdrawn from bond after the date of the enactment of this Act.

SEC. 704. DENIAL OF DEDUCTION FOR CERTAIN RESIDENTIAL TELEPHONE SERVICE.

(a) GENERAL RULE.—Section 262 of the 1986 Code (relating to personal, living, and family expenses) is amended to read as follows:

"SEC. 262. PERSONAL, LIVING, AND FAMILY EXPENSES.

"(a) GENERAL RULE.—Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses.

"(b) TREATMENT OF CERTAIN PHONE EXPENSES.—For purposes of subsection (a), in the case of an individual, any charge (including taxes thereon) for basic local telephone service with respect to the 1st telephone line provided to any residence of the taxpayer shall be treated as a personal expense."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1988.

SEC. 705. VALUATION TABLES.

(a) GENERAL RULE.—Chapter 77 of the 1986 Code (relating to miscellaneous provisions) is amended by adding at the end thereof the following new section:

"SEC. 7520. VALUATION TABLES.

"(a) GENERAL RULE.—For purposes of this title, the value of any annuity, any interest for life or a term of years, or any remainder or reversionary interest shall be determined—

"(1) under tables prescribed by the Secretary, and

"(2) by using an interest rate (rounded to the nearest 2/10ths of 1 percent) equal to 120 percent of the Federal mid-term rate in effect under section 1274(d)(1) for the month in which the valuation date falls.

The taxpayer may elect to use such rate for either of the 2 months preceding the month in which the valuation date falls. In the case of transfers of more than 1 interest in the same property with respect to which such taxpayer is permitted to use the same rate under this subsection, such taxpayer shall use the same rate with respect to each interest.

"(b) TABLES.—

"(1) IN GENERAL.—The tables prescribed by the Secretary for purposes of subsection (a) shall contain valuation factors for a series of interest rate categories.

"(2) INITIAL TABLE.—Not later than the day 3 months after the date of the enactment of this section, the Secretary shall prescribe initial tables for purposes of subsection (a). Such tables may be based on the same mortality experience as used for purposes of section 2031 on the date of the enactment of this section.

"(3) REVISION FOR RECENT MORTALITY CHARGES.—Not later than December 31, 1989, the Secretary shall revise the initial tables prescribed for purposes of subsection (a) to take into account the most recent mortality experience available as of the time of such revision. Such tables shall be revised not less frequently than once each 10 years thereafter to take into account the most recent mortality experience available as of the time of the revision.

"(c) VALUATION DATE.—For purposes of this section, the term 'valuation date' means the date as of which the valuation is made.

"(d) TABLES TO INCLUDE FORMULAS.—For purposes of this section, the term 'tables' includes formulas."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 of the 1986 Code is amended by adding at the end thereof the following new item:

"Sec. 7520. Valuation tables.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply in cases where the valuation date on or after the 1st day of the 6th calendar month beginning after the date of the enactment of this Act.

SUBTITLE B—SUBSTANTIVE PROVISIONS

PART I—CORRECTIONS AFFECTING AGRICULTURE

SEC. 706. TREATMENT OF CERTAIN RENTS UNDER SECTION 2032A.

(a) GENERAL RULE.—Subparagraph (A) of secton 2032A(b)(5) of the 1986 Code (relating to special rules for surviving spouse) is amended by adding at the end thereof the following new sentence: "For purposes of subsection (c), such surviving spouse shall not be treated as failing to use such property in a qualified use solely because such spouse rents such property to a member of such spouse's family on a net cash basis."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply with respect to rentals occurring after December 31, 1976.

(2) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of the amendment made by subsection (a) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefore is filed before the date 1 year after the date of the enactment of this Act.

SEC. 707. CERTAIN DISCHARGES OF INDEBTEDNESS NOT TREATED AS INCOME FOR PURPOSES OF SECTION 501(c)(12).

(a) IN GENERAL.—Section 501(c)(12) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(E) Subparagraph (A) shall be applied without taking into account any income received or accrued from the sale of notes or other obligations held in the Rural Development Insurance fund pursuant to section 1001 of the Omnibus Budget Reconciliation Act of 1986 (as in effect on January 1, 1987)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to sales before, on, or after the date of the enactment of this Act.

SEC. 708. ONE-YEAR DEFERRAL OF PROCEEDS FROM LIVESTOCK SOLD ON ACCOUNT OF DROUGHT.

(a) IN GENERAL.—Paragraph (1) of section 451(e) of the 1986 Code (relating to special rule for proceeds from livestock sold on account of drought) is amended by striking out "(other than livestock described in section 1231(b)(3))".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to sales or exchanges occurring after December 31, 1987.

SEC. 709. CERTAIN CASH WAGES PAID TO SEASONAL AGRICULTURAL LABORERS EXCLUDED FROM OASDI COVERAGE.

(a) SOCIAL SECURITY ACT AMENDMENT.—Paragraph (2) of section 209(h) of the Social Security Act is amended to read as follows:

"(2) Cash remuneration paid by an employer in any calendar year to an employee for agricultural labor unless—

"(A) the cash remuneration paid in such year by the employer to the employee for such labor is $150 or more, or

"(B) the employer's expenditures for agricultural labor in such year equal or exceed $2,500,

except that subparagraph (B) shall not apply with respect to any expenditures for agricultural labor performed by any employee described in section 13(a)(6)(C) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(6)(C));".

(b) FICA AMENDMENT.—Subparagraph (B) of section 3121(a)(8) of the 1986 Code (relating to wages) is amended to read as follows:

"(B) cash remuneration paid by an employer in any calender year to an employee for agricultural labor unless—

"(i) the cash remuneration paid in such year by the employer to the employee for such labor is $150 or more, or

"(ii) the employer's expenditures for agricultural labor in such year equal or exceed $2,500,

except that clause (ii) shall not apply with respect to any expenditures for agricultural labor performed by an employee described in section 13(a)(6)(C) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(6)(C));".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 9002 of the Omnibus Budget Reconciliation Act of 1987.

PART II—PENSION AND EMPLOYEE BENEFIT PROVISIONS

SEC. 710. PROVISIONS RELATING TO BENEFITS UNDER DISCRIMINATORY PLANS.

(a) PROVISIONS NOT TO APPLY TO CHURCH PLANS.—Section 89(i) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(4) CHURCH PLANS.—The term 'statutory employee benefit plan' shall not include a plan maintained by a church for church employees. For purposes of this paragraph, the term 'church' has the meaning given such term by section 3121(w)(3)(A), including a qualified church controlled organization (as defined in section 3121(w)(3)(B))."

(b) CAFETERIA PLANS MAINTAINED BY EDUCATIONAL INSTITUTIONS.—Section 125(c)(2)(C) of the 1986 Code is amended by adding at the end thereof the following new sentence: "In applying section 89 to a plan described in this subparagraph, contributions under the plan shall be tested as of the time the contributions were made."

SEC. 711. MODIFICATIONS OF DISCRIMINATION RULES APPLICABLE TO CERTAIN ANNUITY CONTRACTS.

(a) EXCLUDED EMPLOYEES.—The last sentence of section 403(b)(12)(A) of the 1986 Code is amended to read as follows: "Subject to the conditions applicable under section 410(b)(4), there may be excluded for purposes of this subparagraph employees who are students performing services described in section 3121(b)(10) and employees who normally work less than 20 hours per week."

(b) SAMPLING.—In the case of plan years beginning in 1989, 1990, or 1991, determinations as to whether a plan meets the requirements of section 403(b)(12) of the 1986 Code may be made on the basis of a statistically valid random sample. The preceding sentence shall apply only if—

(1) the sampling is conducted by an independent person in a manner not inconsistent with regulations prescribed by the Secretary, and

(2) the statistical method and sample size result in a 95 percent probability that the results will have a margin of error not greater than 3 percent.

SEC. 712. MINIMUM PARTICIPATION STANDARDS.

Section 401(a)(26) of the 1986 Code, as amended by this Act, is amended by redesignating subparagraph (H) as subparagraph (I) and by inserting after subparagraph (G) the following new subparagraph:

"(H) SPECIAL RULE FOR CERTAIN POLICE OR FIREFIGHTERS.—

"(i) IN GENERAL.—An employer may elect to have this paragraph applied separately with respect to qualified public safety employees who are—

"(I) policemen, or

"(II) firemen.

"(ii) QUALIFIED PUBLIC SAFETY EMPLOYEE.—For purposes of this subparagraph, the term 'qualified public safety employee' means any full-time employee of any police department or fire department organized and operated by a State or political subdivision if the employee provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision."

SEC. 713. CLARIFICATION OF TREATMENT OF JOINT AND SURVIVOR ANNUITIES UNDER QTIP RULES.

(a) ESTATE TAX.—Paragraph (7) of section 2056(b) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(C) TREATMENT OF SURVIVOR ANNUITIES.—In the case of an annuity where only the surviving spouse has the right to receive payments before the death of such surviving spouse—

"(i) the interest of such surviving spouse shall be treated as a qualifying income interest for life, and

"(ii) the executor shall be treated as having made an election under this subsection with respect to such annuity unless the executor otherwise elects on the return of tax imposed by section 2001.

An election under clause (ii), once made, shall be irrevocable."

(b) GIFT TAX.—Subsection (f) of section 2523 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(6) TREATMENT OF JOINT AND SURVIVOR ANNUITIES.—In the case of a joint and survivor annuity where only the donor spouse and donee spouse have the right to receive payments before the death of the last spouse to die—

"(A) the donee spouse's interest shall be treated as a qualifying income interest for life,

"(B) the donor spouse shall be treated as having made an election under this subsection with respect to such annuity unless the donor spouse otherwise elects on or before the date specified in paragraph (4)(A),

"(C) paragraph (5) and section 2519 shall not apply to the donor spouse's interest in the annuity, and

"(D) if the donee spouse dies before the donor spouse, no amount shall be includible in the gross estate of the donee spouse under section 2044 with respect to such annuity.

An election under subparagraph (B), once made, shall be irrevocable."

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection—

(A) the amendment made by subsection (a) shall apply with respect to decedents dying after December 31, 1981, and

(B) the amendment made by subsection (b) shall apply to transfers after December 31, 1981.

(2) NOT TO APPLY TO EXTENT INCONSISTENT WITH PRIOR RETURN.—In the case of any estate or gift tax return filed before the date of the enactment of this Act, the amendments made by this section shall not apply to the extent such amendments would be inconsistent with the treatment of the annuity on such return unless the executor or donor (as the case may be) otherwise elects under this paragraph before the day 2 years after the date of the enactment of this Act.

(3) EXTENSION OF TIME FOR ELECTION OUT.—The time for making an election under section 2056(b)(7)(C)(ii) or 2523(f)(6)(B) of the 1986 Code (as added by this subsection) shall not expire before the day 2 years after the date of the enactment of this Act (and, if such election is made within the time permitted under this paragraph, the requirement of such section 2056(b)(7)(C)(ii) that it be made on the return shall not apply).

SEC. 714. RURAL TELEPHONE COOPERATIVES PERMITTED TO HAVE QUALIFIED CASH OR DEFERRED ARRANGEMENTS.

(a) IN GENERAL.—Paragraphs (1) and (2) of section 401(k) of the 1986 Code (relating to cash or deferred arrangements) are each amended by striking out "or a rural electric cooperative plan" and inserting in lieu thereof "or a rural cooperative plan".

(b) RURAL COOPERATIVE PLAN DEFINED.—

(1) Paragraph (7) of section 401(k) of the 1986 Code (as amended by title I) is amended to read as follows:

"(7) RURAL COOPERATIVE PLAN.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'rural cooperative plan' means any pension plan—

"(i) which is a defined contribution plan (as defined in section 414(i)), and

"(ii) which is established and maintained by a rural cooperative.

"(B) RURAL COOPERATIVE DEFINED.—For purposes of subparagraph (A), the term 'rural cooperative' means—

"(i) any organization which—

"(I) is exempt from tax under this subtitle or which is a State or local government or political subdivision thereof (or agency or instrumentality thereof), and

"(II) is engaged primarily in providing electric service on a mutual or cooperative basis,

"(ii) any organization described in paragraph (4) or (6) of section 501(c) and at least 80 percent of the members of which are organizations described in clause (i),

"(iii) a cooperative telephone company described in section 501(c)(12), and

"(iv) an organization which is a national association of organizations described in clause (i), (ii), or (iii)."

(2) Subparagraph (B) of section 401(k)(4) of the 1986 Code (as amended by title I) is amended by striking out "rural electric cooperative plan" and inserting in lieu thereof "rural cooperative plan".

(c) AMENDMENTS TO SECTION 457.—Section 457 of the 1986 Code (as amended by section 1107 of the Reform Act) is amended by striking out "rural electric cooperative plan" in subsection (c)(2) and inserting in lieu thereof "rural cooperative plan".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 715. EMPLOYEE LEASING.

Section 414(n)(6) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(C) DE MINIMIS RULE.—

"(i) IN GENERAL.—In the case of a recipient—

"(I) which has no top-heavy plans (within the meaning of section 416(g)), and

"(II) which uses the services of persons other than employees for less than 10 percent of such recipient's total workload,

any leased employee described in clause (ii) shall not be treated as an employee of such recipient.

"(ii) LEASED EMPLOYEES TO WHOM SUBPARAGRAPH APPLIES.—A leased employee is described in this clause if—

"(I) the leased employee did not perform 3,000 or more hours of service for the recipient in any 2-consecutive plan year period beginning after 1986, and

"(II) did not perform services for the recipient within the same geographic area at any time during the plan year preceding any period referred to in subclause (I)."

SEC. 716. SECTION 415 LIMITATION FOR STATE AND LOCAL PLANS.

(a) MODIFIED LIMITATIONS.—Section 415(b) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(10) SPECIAL RULE FOR STATE AND LOCAL GOVERNMENT PLANS.—

"(A) LIMITATION TO EQUAL ACCRUED BENEFIT.—In the case of a plan maintained for its employees by any State or political subdivision thereof, or by any agency or instrumentality of the foregoing, the limitation with respect to a qualified participant under this subsection shall not be less than the accrued benefit of the participant under the plan (determined without regard to any amendment of the plan made after October 14, 1987).

"(B) QUALIFIED PARTICIPANT.—For purposes of this paragraph, the term 'qualified participant' means a participant who first became a participant in the plan maintained by the employer before January 1, 1990.

"(C) ELECTION.—This paragraph shall not apply to any plan unless each employer maintaining the plan elects before the close of the 1st plan year beginning after December 31, 1989, to have this subsection (other than paragraph (2)(G)) applied without regard to paragraph (2)(F)."

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendment made by this subsection apply to years beginning after December 31, 1982.

(2) ELECTION.—Section 415(b)(10)(C) of the 1986 Code (as added by paragraph 1) shall not apply to any year beginning before January 1, 1990.

SEC. 717. CHURCH SELF-FUNDED DEATH BENEFIT PLANS TREATED AS LIFE INSURANCE.

(a) IN GENERAL.—Section 7702 of the 1986 Code (defining life insurance contract) is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) CERTAIN CHURCH SELF-FUNDED DEATH BENEFIT PLANS TREATED AS LIFE INSURANCE.—

"(1) IN GENERAL.—In determining whether any plan or arrangement described in paragraph (2) is a life insurance contract, the requirement of subsection (a) that the contract be a life insurance contract under applicable law shall not apply.

"(2) DESCRIPTION.—For purposes of this subsection, a plan or arrangement is described in this paragraph if—

"(A) such plan or arrangement provides for the payment of benefits by reason of the death of the individuals covered under such plan or arrangement, and

"(B) such plan or arrangement is provided by a church for the benefit of its employees and their beneficiaries, directly or through an organization described in section 414(e)(3)(A) or an organization described in section 414(e)(3)(B)(ii).

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) CHURCH.—The term 'church' means a church or a convention or association of churches.

"(B) EMPLOYEE.—The term 'employee' includes an employee described in section 414(e)(3)(B)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendment made by section 221(a) of the Tax Reform Act of 1984.

SEC. 718. STUDY OF EFFECT OF MINIMUM PARTICIPATION RULE ON EMPLOYERS REQUIRED TO PROVIDE CERTAIN RETIREMENT BENEFITS.

(a) STUDY.—The Secretary of the Treasury or his delegate shall conduct a study on the application of section 401(a)(26) of the Internal Revenue Code of 1986 to Government contractors who—

(1) are required by Federal law to provide certain employees specified retirement benefits, and

(2) establish a separate plan for such employees while maintaining a separate plan for employees who are not entitled to such benefits.

Such study shall consider the Federal requirements with respect to employee benefits for employees of Government contractors, whether a special minimum participation rule should apply to such employees, and methods by which plans may be modified to satisfy minimum participation requirements.

(b) REPORT.—The Secretary of the Treasury or his delegate shall report the results of the study under subsection (a) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives not later than September 1, 1989.

SEC. 719. PROHIBITION ON COLLECTIBLES NOT TO INCLUDE STATE COINS.

(a) IN GENERAL.—Paragraph (3) of section 408(m) of the 1986 Code is amended to read as follows:

"(3) EXCEPTION FOR CERTAIN COINS.—In the case of an individual retirement account, paragraph (2) shall not apply to—

"(A) any gold coin described in paragraph (7), (8), (9), or (10) of section 5112(a) of title 31,

"(B) any silver coin described in section 5112(e) of title 31, or

"(C) any coin issued under the laws of any State."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to acquisitions after the date of the enactment of this Act.

SEC. 720. 1-YEAR DELAY IN DISTRIBUTION REQUIREMENT FOR GOVERNMENT AND TAX-EXEMPT PLANS.

In the case of a plan maintained by—

(1) a State or local government or political subdivision thereof, or

(2) an organization described in section 501(c)(3) of the 1986 Code which is exempt from tax under section 501(a) of such Code,

the requirement of section 401(a)(9)(c) of such Code (as in effect after the amendment made by section 1121(b) of the Reform Act) or any provision determined by reference to such section shall not apply to any year beginning before January 1, 1990.

SEC. 721. APPLICATION OF FUNDING RULES TO MULTIPLE EMPLOYER PLANS.

(a) IN GENERAL.—Paragraph (4) of section 413(c) of the 1986 Code is amended to read as follows:

"(4) FUNDING.—

"(A) IN GENERAL.—In the case of a plan established after December 31, 1988, each employer shall be treated as maintaining a separate plan.

"(B) OTHER PLANS.—In the case of a plan not described in subparagraph (A), the requirements of section 412 shall be determined as if all participants in the plan were employed by a single employer unless the plan administrator elects not later than the close of the first plan year of the plan beginning after the date of enactment of the Technical Corrections Act of 1988 to have the provisions of subparagraph (A) apply. An election under the preceding sentence shall take effect for the plan year in which made and, once made, may be revoked only with the consent of the Secretary."

(b) DEDUCTION LIMITATIONS.—Paragraph (6) of section 413(c) of the 1986 Code is amended to read as follows:

"(6) DEDUCTION LIMITATIONS.—

"(A) In the case of a plan established after December 31, 1988, each applicable limitation provided by section 404(a) shall be determined as if each employer were maintaining a separate plan.

"(B) OTHER PLANS.—

"(i) IN GENERAL.—In the case of a plan not described in subparagraph (A), each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer, except that if an election is made under paragraph (4)(B), subparagraph (A) shall apply to such plan.

"(ii) SPECIAL RULE.—If this subparagraph applies, the amounts contributed to or under the plan by each employer who maintains the plan (for the portion of the taxable year included within a plan year) shall be considered not to exceed any such limitation if the anticipated employer contributions for such plan year (determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary) do not exceed such limitation. If such anticipated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary."

(c) CONFORMING AMENDMENT.—Section 413(c) of the 1986 Code is amended by striking out the last sentence and by inserting after paragraph (6) the following new paragraph:

"(7) ALLOCATIONS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), allocations of amounts under paragraphs (4), (5), and (6) among the employers maintaining the plan shall not be inconsistent with regulations prescribed for this purpose by the Secretary.

"(B) ASSET AND LIABILITIES OF PLAN.—For purposes of applying paragraphs (4)(A) and (6)(A), the assets and liabilities of each plan shall be treated as the assets and liabilities which would be allocated to a plan maintained by the employer if the employer withdrew from the multiple employer plan."

(d) EFFECTIVE DATE.—Except as provided in paragraph (2), the amendments made by this section shall apply to plan years beginning after the date of the enactment of this Act.

SEC. 722. WITHDRAWAL LIABILITY OF MULTIEMPLOYER PLANS.

(a) STUDY.—

(1) IN GENERAL.—The Pension Benefit Guaranty Corporation shall complete the study required by section 412(a)(1)(B) of the Multiemployer Pension Plan Amendments Act of 1980 (relating to union-mandated withdrawal from multiemployer pension plans) and shall report the results of such study to Congress not later than March 1, 1989.

(2) FACTORS CONSIDERED.—The study under paragraph (1) shall include an analysis of—

(A) the effect of union-mandated withdrawals on employer withdrawal liability, and

(B) whether employer liability should be initiated by an illegal strike or illegal bargaining by an employee representative.

(b) PAYMENT OF WITHDRAWAL LIABILITY.—Notwithstanding any other provision of law, in the case of any employer withdrawal liability under title IV of the Employee Retirement Income Security Act of 1974 which is attributable to striking or picketing in violation of the National Labor Relations Act (as determined by the National Labor Relations Board) and which—

(1) has not been paid before September 8, 1988, or

(2) arises after such date and before January 1, 1990,

shall not be payable before January 1, 1990.

SEC. 723. STUDY OF TREATMENT OF CERTAIN TECHNICAL PERSONNEL.

The Secretary of the Treasury or his delegate shall conduct a study of the treatment provided by section 1706 of the Reform Act (relating to treatment of certain technical personnel). The report of such study shall be submitted not later than September 1, 1989, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

PART III—EXEMPT ORGANIZATIONS

SEC. 724. CERTAIN GAMES OF CHANCE NOT TREATED AS UNRELATED TRADE OR BUSINESS.

Section 1834 of the Reform Act is amended by adding at the end thereof the following new sentence: "The amendment made by this section shall apply to games of chance conducted after October 22, 1986, in taxable years ending after such date".

SEC. 725. PURCHASE OF INSURANCE BY COOPERATIVE HOSPITAL SERVICE ORGANIZATIONS.

(a) IN GENERAL.—Subparagraph (A) of section 501(e)(1) of the 1986 Code is amended by inserting "(including the purchasing of insurance on a group basis)" after "purchasing".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to purchases before, on, or after the date of the enactment of this Act.

SEC. 726. DONATED CARGO EXEMPT FROM HARBOR MAINTENANCE TAX.

(a) GENERAL RULE.—Section 4462 of the 1986 Code (relating to definitions and special rules) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) EXEMPTION FOR HUMANITARIAN AND DEVELOPMENT ASSISTANCE CARGOS.—No tax shall be imposed under this subchapter on any nonprofit organization or cooperative for cargo which is owned or financed by such nonprofit organization or cooperative and which is certified by the United States Customs Service as intended for use in hu-

manitarian or development assistance overseas."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on April 1, 1987.

SEC. 727. CERTAIN EDUCATIONAL INSTITUTIONS EXEMPT FROM USER FEES ON PERMITS FOR INDUSTRIAL USE OF SPECIALLY DENATURED DISTILLED SPIRITS.

(a) IN GENERAL.—Section 5276 of the 1986 Code (relating to occupational tax) is amended by adding at the end thereof the following new subsection:

"(c) EXEMPTION FOR CERTAIN EDUCATIONAL INSTITUTIONS.—Subsection (a) shall not apply with respect to any scientific university, college of learning, or institution of scientific research which—

"(1) is issued a permit under section 5271(a)(2), and

"(2) with respect to any calendar year during which such permit is in effect, procures less than 25 gallons of specially denatured distilled spirits for experimental or research use but not for consumption (other than organoleptic tests) or sale."

(b) CONFORMING AMENDMENT.—Section 5276(a) of the 1986 Code is amended by striking out "A permit" and inserting in lieu thereof "Except as provided in subsection (c), a permit".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 1989.

SEC. 728. TREATMENT OF CERTAIN AMOUNTS PAID TO OR FOR THE BENEFIT OF AN INSTITUTION OF HIGHER EDUCATION.

(a) IN GENERAL.—Section 170 of the 1986 Code is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) TREATMENT OF CERTAIN AMOUNTS PAID TO OR FOR THE BENEFIT OF INSTITUTIONS OF HIGHER EDUCATION.—

"(1) IN GENERAL.—For purposes of this section, 80 percent of any amount described in paragraph (2) shall be treated as a charitable contribution.

"(2) AMOUNT DESCRIBED.—For purposes of paragraph (1), an amount is described in this paragraph if—

"(A) the amount is paid by the taxpayer to or for the benefit of an educational organization—

"(i) which is described in subsection (b)(1)(A)(ii), and

"(ii) which is an institution of higher education (as defined in section 3304(f)), and

"(B) such amount would be allowable as a deduction under this section but for the fact that the taxpayer receives (directly or indirectly) as a result of paying such amount the right to purchase tickets for seating at an athletic event in an athletic stadium of such institution.

If any portion of a payment is for the purchase of such tickets, such portion and the remaining portion (if any) of such payment shall be treated as separate amounts for purposes of this subsection."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall apply to taxable years beginning after December 31, 1983.

(2) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of section 170(m) of the 1986 Code (as added by subsection (a)) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefore is filed before the date 1 year after the date of the enactment of this Act.

PART IV—ADMINISTRATIVE PROVISIONS

SEC. 729. CLARIFICATION OF MEANING OF MANUFACTURE UNDER TRUCK EXCISE TAX.

(a) IN GENERAL.—Paragraph (1) of section 4052(a) of the 1986 Code (defining first retail sale) is amended by striking out "manufacture, production" and inserting in lieu thereof "production, manufacture".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 1988.

SEC. 730. AUTHORITY TO PRESCRIBE TOLERANCES FOR THE VOLUME OF WINE IN BOTTLES FOR PURPOSES OF THE EXCISE TAX ON WINE.

(a) IN GENERAL.—Section 5041 of the 1986 Code (relating to imposition and rate of tax on wine) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) TOLERANCES.—Where the Secretary finds that the revenue will not be endangered thereby, he may by regulation prescribe tolerances (but not greater than ½ of 1 percent) for bottles and other containers, and, if such tolerances are prescribed, no assessment shall be made and no tax shall be collected for any excess in any case where the contents of a bottle or other container are within the limit of the applicable tolerance prescribed."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to wine removed after December 31, 1988.

SEC. 731. WHOLESALE DISTRIBUTORS TO ADMINISTER CLAIMS FOR REFUND OF GASOLINE TAX.

(a) IN GENERAL.—Subsection (a) of section 6416 of the 1986 Code (relating to certain taxes and services) is amended by adding at the end thereof the following new paragraph:

"(4) WHOLESALE DISTRIBUTORS TO ADMINISTER CREDITS AND REFUNDS OF GASOLINE TAX.—

"(A) IN GENERAL.—For purposes of this subsection, a wholesale distributor who purchases any product on which tax imposed by section 4081 has been paid and who sells the product to its ultimate purchaser shall be treated as the person (and the only person) who paid such tax.

"(B) WHOLESALE DISTRIBUTOR.—For purposes of subparagraph (A), the term 'wholesale distributor' has the meaning given such term by section 4092(b)(2) (determined by substituting 'any product taxable under section 4081' for 'a taxable fuel' therein)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to fuel sold by wholesale distributors (as defined in section 6416(a)(4)(B) of the 1986 Code, as added by this section) after September 30, 1988.

SEC. 732. ELECTION TO BE TREATED AS QUALIFIED ELECTING FUND TO BE MADE BY TAXPAYER.

(a) GENERAL RULE.—Section 1295 of the 1986 Code (defining qualified electing fund) is amended to read as follows:

"SEC. 1295. QUALIFIED ELECTING FUND.

"(a) GENERAL RULE.—For purposes of this part, any passive foreign investment company shall be treated as a qualified electing fund with respect to the taxpayer if—

"(1) an election by the taxpayer under subsection (b) applies to such company for the taxable year, and

"(2) such company complies with such requirements as the Secretary may prescribe for purposes of—

"(A) determining the ordinary earnings and net capital gain of such company, and

"(B) otherwise carrying out the purposes of this subpart.

"(b) ELECTION.—

"(1) IN GENERAL.—A taxpayer may make an election under this subsection with respect to any passive foreign investment company for any taxable year of the taxpayer. Such an election, once made with respect to any company, shall apply to all subsequent taxable years of the taxpayer with respect to such company unless revoked by the taxpayer with the consent of the Secretary.

"(2) WHEN MADE.—An election under this subsection may be made for any taxable year at any time on or before the due date (determined with regard to extensions) for filing the return of the tax imposed by this chapter for such taxable year. To the extent provided in regulations, such an election may be made later than as required in the preceding sentence where the taxpayer fails to make a timely election because the taxpayer reasonably believed that the company was not a passive foreign investment company."

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 1291(d) of the 1986 Code (as amended by title I) is amended by striking out "for each" in the material preceding subparagraph (A) and inserting in lieu thereof "with respect to the taxpayer for each".

(2) Subparagraphs (A)(i) and (B)(i) of section 1291(d)(2) of the 1986 Code (as amended by title I) are each amended by striking out "for a taxable year" and inserting in lieu thereof "with respect to the taxpayer for a taxable year".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect as if included in the amendments made by section 1235 of the Reform Act.

(2) TIME FOR MAKING ELECTION.—The period during which an election under section 1295(b) of the 1986 Code may be made shall in no event expire before the date 60 days after the date of the enactment of this Act.

SEC. 733. ELECTION TO CLAIM CERTAIN UNEARNED INCOME OF CHILD ON PARENT'S RETURN.

(a) IN GENERAL.—Section 6012 of the 1986 Code (relating to persons required to make returns of income) is amended by redesignating subsection (e) as subsection (f) and inserting after subsection (d) the following new subsection:

"(e) ELECTION TO CLAIM CERTAIN UNEARNED INCOME OF CHILD ON PARENT'S RETURN.—

"(1) IN GENERAL.—Any child who—

"(A) has only qualified unearned income for the taxable year,

"(B) such unearned income is more than $500 and less than $5,000, and

"(C) the parent of such child (as determined under section 1(i)(5)) elects to claim such income on his return,

shall not be required to file a return under this section.

"(2) NO ELECTION IF ESTIMATED TAXES PAID IN CHILD'S NAME.—Paragraph (1) shall not apply in any taxable year in which estimated tax payments for such year are made in the name and TIN of the child.

"(3) QUALIFIED UNEARNED INCOME.—For purposes of this section, the term 'qualified unearned income' means—

"(A) interest payments,
"(B) dividend payments, and
"(C) Alaska Permanent Fund dividends.

"(4) INCOME INCLUDED IN PARENT'S GROSS INCOME.—In the case of any parent making an election under this subsection, any qualified unearned income of the child for the taxable year shall be included in such parent's gross income for such year (and not in such child's gross income) in an amount equal to the excess (if any) of—

"(A) such qualified unearned income, over
"(B) the lesser of—
"(i) $500, or
"(ii) the taxable portion of such qualified unearned income.

"(5) REGULATIONS.—The Secretary shall issue such regulations as may be necessary to carry out the purposes of this subsection."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1988.

SEC. 734. REPORT ON THE SMALL BUSINESS INNOVATION RESEARCH PROGRAM.

Subsection (a) of section 6 of the Small Business Innovation Development Act of 1982 (15 U.S.C. 638, note) is amended by striking out "December 31, 1988" and inserting in lieu thereof "July 1, 1989".

SEC. 735. EXCHANGE OF INFORMATION.

Clause (i) of section 6103(b)(5)(B) of the 1986 Code (defining State) is amended by striking out "2,000,000" and inserting in lieu thereof "250,000".

SEC. 736. STUDY ON HEALTH CARE COSTS RESULTING FROM SMOKING.

(a) IN GENERAL.—The Secretary of the Treasury or his delegate shall, in consultation with the Surgeon General of the Public Health Service, conduct an ongoing study of—

(1) the public and private health care costs incurred (with respect to smokers, their spouses, and others) as a result of cigarette smoking in the United States,

(2) the incidence of cigarette smoking in the United States by adults and by teenage and younger children, and

(3) the impact of the rate of the excise tax imposed by section 5701 of the Internal Revenue Code of 1986 on cigarette smoking by adults and by teenage and younger children.

(b) REPORTS.—Reports of the study required by subsection (a) shall be submitted every 2 years, with the 1st such report to be submitted by January 1, 1989. Each such report shall be submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

PART V—TAX-EXEMPT BONDS

SEC. 737. AMENDMENT TO MORTGAGE BOND PURCHASE PRICE REGULATIONS.

The Secretary of the Treasury or his delegate shall amend the regulations relating to mortgage bond purchase price requirements, with respect to any lease with a remaining term of at least 35 years and a specified ground rent for at least the first 10 years of such term but not for the entire term, to provide for a capitalized value of such lease equal to the present value of the current ground rent projected over the remaining term of the lease and discounted at 3 percent or such other discount rate as the Secretary establishes. If such amendment is not made before the date of the enactment of this Act, such regulations shall be considered to include such amendment with respect to bonds issued after such date.

SEC. 738. APPLICATION OF SECURITY INTEREST TEST TO BOND FINANCING OF HAZARDOUS WASTE CLEAN-UP ACTIVITIES.

Before January 1, 1989, the Secretary of the Treasury or his delegate shall issue guidance concerning the application of the private security or payment test under section 141(b)(2) of the Internal Revenue Code of 1986 to tax-exempt bond financing by State and local governments of hazardous waste clean-up activities conducted by such governments where some of the activities occur on privately owned land.

SEC. 739. CALCULATION OF INCOME LIMITS FOR QUALIFIED MORTGAGE BOND FINANCED HOMES IN HIGH HOUSING COST AREAS.

(a) IN GENERAL.—Section 143(f) of the 1986 Code (relating to income requirements) is amended by adding at the end thereof the following new paragraph:

"(5) ADJUSTMENT OF INCOME REQUIREMENT BASED ON RELATION OF HIGH HOUSING COSTS TO INCOME.—

"(A) IN GENERAL.—If the residence (for which financing is provided under the issue) is located in a high housing cost area, the percentage described in this paragraph shall be determined under subparagraph (B) and without regard to paragraph (4)(B).

"(B) INCOME REQUIREMENTS FOR RESIDENCES IN HIGH HOUSING COST AREA.—The percentage determined under this subparagraph for a residence located in a high housing cost area is the percentage (not greater than 140 percent) equal to the product of—

"(I) 115 percent, and
"(II) the amount by which the housing cost/income ratio for such area exceeds 0.2.

"(C) HIGH HOUSING COST AREAS.—For purposes of this paragraph, the term 'high housing cost area' means any statistical area for which the housing cost/income ratio is greater than 1.2.

"(D) HOUSING COST/INCOME RATIO.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'housing cost/income ratio' means, with respect to any statistical area, the number determined by dividing—

"(I) the applicable housing price ratio for such area, by

"(II) the ratio which the area median gross income for such area bears to the median gross income for the United States.

"(ii) APPLICABLE HOUSING PRICE RATIO.—For purposes of clause (i), the applicable housing price ratio for any area is the new housing price ratio or the existing housing price ratio, whichever results in the housing cost/income ratio being closer to 1.

"(iii) NEW HOUSING PRICE RATIO.—The new housing price ratio for any area is the ratio which—

"(I) the average area purchase price (as defined in subsection (e)(2)) for residences described in subsection (e)(3)(A) which are located in such area bears to

"(II) the average purchase price (determined in accordance with the principles of subsection (e)(2)) for residences so described which are located in the United States.

"(iv) EXISTING HOUSING PRICE RATIO.—The existing housing price ratio for any area is the ratio determined in accordance with clause (iii) but with respect to residences described in subsection (e)(3)(B)."

(b) CONFORMING AMENDMENT.—Section 143(f)(1) of the 1986 Code is amended by striking out "whose family income is 115 percent or less of the applicable median family income" and inserting in lieu thereof "whose family income is the greater of—

"(A) 115 percent or less of the applicable median family income, or

"(B) the percentage described in paragraph (5)."

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to bonds issued, and nonissued bond amounts elected, after December 31, 1988.

(2) SPECIAL RULES RELATING TO CERTAIN REQUIREMENTS AND REFUNDING BONDS.—In the case of a bond issued to refund (or which is part of a series of bonds issued to refund) a bond issued before January 1, 1989, the amendments made by this section shall apply to financing provided after the date of issuance of the refunding issue.

SEC. 740. TAX-EXEMPT FINANCING FOR CERTAIN RAIL FACILITIES.

(a) IN GENERAL.—Subsection (a) of section 142 of the 1986 Code (relating to exempt facility bonds) is amended—

(1) by striking out "or" at the end of paragraph (9),

(2) by striking out the period at the end of paragraph (10) and inserting in lieu thereof ", or", and

(3) by adding at the end thereof the following new paragraph:

"(11) high-speed intercity rail facilities."

(b) DEFINITION AND SPECIAL RULES FOR HIGH-SPEED INTERCITY RAIL FACILITIES.—

(1) IN GENERAL.—Section 142 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(i) HIGH-SPEED INTERCITY RAIL FACILITIES.—

"(1) For purposes of subsection (a)(11), the term 'high-speed intercity rail facilities' means any facility (not including rolling stock) for the fixed guideway rail transportation of passengers and their baggage between metropolitan statistical areas (within the meaning of section 143(k)(2)(C)) using vehicles that are reasonably expected to operate at speeds in excess of 150 miles per hour between scheduled stops, but only if such facility will be made available to members of the general public as passengers.

"(2) ELECTION BY NONGOVERNMENTAL OWNERS.—A facility shall be treated as described in subsection (a)(11) only if any owner of such facility which is not a governmental unit irrevocably elects not to claim—

"(A) any deduction under section 167 or 168, and

"(B) any credit under this subtitle,

with respect to the property to be financed by the net proceeds of the issue.

"(3) USE OF PROCEEDS.—A bond issued as part of an issue described in subsection (a)(11) shall not be considered an exempt facility bond unless any proceeds not used within a 3-year period of the date of the issuance of such bond are used (not later than 6 months after the close of such period) to redeem bonds which are part of such issue."

(2) USE OF FACILITIES.—Subsection (c) of section 142 of the 1986 Code (relating to special rules for airport, docks and wharves, and mass commuting facilities) is amended—

(A) by striking out "paragraph (1), (2), or (3) of subsection (a)" each place it appears in paragraphs (1) and (2) thereof and inserting in lieu thereof "paragraph (1), (2), (3) or (11) of subsection (a)", and

(B) by striking out "AND MASS COMMUTING FACILITIES" in the heading thereof and inserting in lieu thereof "MASS COMMUTING

FACILITIES AND HIGH-SPEED INTERCITY RAIL FACILITIES".

(3) PARTIAL EXCLUSION FROM VOLUME CAP.—Paragraph (3) of section 146(g) of the 1986 Code (relating to an exception for certain bonds) is amended—

(A) by striking out "and" at the end of paragraph (2),

(B) by striking out the period at the end of paragraph (3) and inserting in lieu thereof ", and" and

(C) by adding at the end thereof the following new paragraph:

"(3) 75 percent of any exempt facility bond issued as part of an issue described in paragraph (11) of section 142(a) (relating to high-speed intercity rail facilities."

(4) LIMITATION REMOVED ON USE OF BOND PROCEEDS FOR LAND ACQUISITION.—Paragraph (3) of section 147(c) of the 1986 Code (relating to limitation on use for land acquisition) is amended by inserting "high-speed intercity rail facility" after "mass commuting facility" each place it appears.

(5) SPECIAL RULE FOR PUBLIC APPROVAL.—Paragraph (3) of section 147(f) of the 1986 Code (relating to public approval required for private activity bonds) is amended—

(A) by inserting "or high-speed intercity rail facilities" after "airport" each place it appears, and

(B) by inserting "OR HIGH-SPEED INTERCITY RAIL FACILITIES" after "AIRPORTS" in the heading thereof.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of enactment of this Act.

SEC. 741. RULES RELATING TO REBATE ON EARNINGS ON BONA FIDE DEBT SERVICE FUND.

(a) NO REBATE WHERE EARNINGS DO NOT EXCEED $100,000.—Clause (ii) of section 148(f)(4)(A) of the 1986 Code is amended by striking "unless the issuer otherwise elects,".

(b) $100,000 LIMIT NOT TO APPLY TO CERTAIN ISSUES.—Subparagraph (A) of section 148(f)(4) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"In the case of an issue no bond of which is a private activity bond, clause (ii) shall be applied without regard to the dollar limitation therein if the average maturity of the issue (determined in accordance with section 147(b)(2)(A)) is at least 5 years and the rates of interest on bonds which are part of the issue do not vary during the term of the issue."

(c) EFFECTIVE DATE; SPECIAL RULES.—

(1) IN GENERAL.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.

(2) ELECTION FOR OUTSTANDING BONDS.—Any issue of bonds other than private activity bonds outstanding as of the date of the enactment of this Act shall be allowed a 1-time election to apply the amendments made by subsection (b) to amounts deposited after such date in bona fide debt service funds of such bonds.

(3) DEFINITION OF PRIVATE ACTIVITY BOND.—For purposes of this section and the last sentence of section 148(f)(4)(A) of the 1986 Code (as added by subsection (b)) the term 'private activity bond' shall include any qualified 501(c)(3) bond (as defined under section 145 of the 1986 Code).

PART VI—MISCELLANEOUS PROVISIONS

SEC. 741. APPLICATION OF NET OPERATING LOSS LIMITATIONS TO BANKRUPTCY REORGANIZATIONS.

(a) TIME FOR DETERMINING WHETHER OWNERSHIP CHANGE OCCURS.—Section 621(f)(5) of the Tax Reform Act of 1986 is amended by adding at the end thereof the following new sentence: "The determination as to whether an ownership change has occurred during the period beginning January 1, 1987, and ending on the final settlement of any reorganization or proceeding described in the preceding sentence shall be redetermined as of the time of such final settlement."

(b) ELECTION TO HAVE NEW RULES APPLY.—Section 621(f)(5) of the Tax Reform Act of 1986 is amended by striking out "In" and inserting in lieu thereof "Unless the taxpayer elects not to have the provisions of this paragraph apply, in".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in section 621(f)(5) of the Tax Reform Act of 1986.

SEC. 742. DEFINITION OF LARGE BANK.

(a) IN GENERAL.—Paragraph (2) of section 585(c) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"If all the stock of a member of a parent-subsidiary controlled group is held by such group, is sold to one or more unrelated persons, the taxable years for which such member was treated as a large bank under subparagraph (B) by reason of membership in such group shall not be taken into account under this paragraph for taxable years beginning after such sale."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 901(a)(2) of the Reform Act.

SEC. 743. INTEREST EARNED BY BROKERS OR DEALERS NOT TAKEN INTO ACCOUNT AS PERSONAL HOLDING COMPANY INCOME.

(a) IN GENERAL.—Paragraph (1) of section 543(a) of the 1986 Code is amended by striking out "and" at the end of subparagraph (B), by striking out the period at the end of subparagraph (C) and inserting in lieu thereof ", and" and by adding at the end thereof the following new subparagraph:

"(D) interest received by a broker or dealer (within the meaning of section 3(a)(4) or (5) of the Securities and Exchange Act of 1934) in connection with—

"(i) any securities or money market instruments held as property described in section 1221(1),

"(ii) margin accounts, or

"(iii) any financing for a customer secured by securities or money market instruments."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to interest received after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 744. TREATMENT OF CERTAIN INSTRUMENTS UNDER FOREIGN CURRENCY RULES.

(a) GENERAL RULE.—Clause (iii) of section 988(c)(1)(B) of the 1986 Code (as amended by title I) is amended by striking out "unless such instrument would be marked to market under section 1256 if held on the last day of the taxable year".

(b) TECHNICAL AMENDMENTS.—

(1) Paragraph (1) of section 988(a) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(C) APPLICATION OF SUBPARAGRAPH (B) IN THE CASE OF CERTAIN TRADERS.—In the case of any instrument—

"(i) which would be marked to market under section 1256 if held on the last day of the taxable year, and

"(ii) which was entered into or acquired by the taxpayer in the active conduct of the trade or business of trading such instruments,

to the extent provided in regulations, subparagraph (B) shall be applied without regard to the requirement that the instrument not be part of a straddle and without regard to the identification requirement contained therein."

(2) Paragraph (1) of section 988(d) of the 1986 Code is amended by striking out the second sentence and inserting in lieu thereof the following: "For purposes of the preceding sentence, the term 'section 988 transaction' shall not include any transaction with respect to which an election is made under subsection (a)(1)(B)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to forward contracts, future contracts, options, and similar financial instruments entered into or acquired after September 8, 1988.

SEC. 745. DUAL RESIDENT COMPANIES.

(a) GENERAL RULE.—In the case of a transaction which—

(1) involves the transfer after the date of the enactment of this Act by a domestic corporation, with respect to which there is a qualified excess loss account, of its assets and liabilities to a foreign corporation in exchange for all of the stock of such foreign corporation, followed by the complete liquidation of the domestic corporation into the common parent, and

(2) qualifies, pursuant to Revenue Ruling 87-27, as a reorganization which is described in section 368(a)(1)(F) of the 1986 Code,

then, solely for purposes of applying Treasury Regulation section 1.1502-19 to such qualified excess loss account, such foreign corporation shall be treated as a domestic corporation in determining whether such foreign corporation is a member of the affiliated group of the common parent.

(b) TREATMENT OF INCOME OF NEW FOREIGN CORPORATION.—

(1) IN GENERAL.—In any case to which subsection (a) applies, for purposes of the 1986 Code—

(A) the source and character of any item of income of the foreign corporation referred to in subsection (a) shall be determined as if such foreign corporation were a domestic corporation,

(B) the net amount of any such income shall be treated as subpart F income (without regard to section 952(c) of the 1986 Code), and

(C) the amount in the qualified excess loss account referred to in subsection (a) shall—

(i) be reduced by the net amount of any such income, and

(ii) be increased by the amount of any such income distributed directly or indirectly to the common parent described in subsection (a).

(2) LIMITATION.—Paragraph (1) shall apply to any item of income only to the extent that the net amount of such income does not exceed the amount in the qualified excess loss account after being reduced under paragraph (1)(C) for prior income.

(3) BASIS ADJUSTMENTS NOT APPLICABLE.—To the extent paragraph (1) applies to any item of income, there shall be no increase in

basis under section 961(a) of such Code on account of such income (and there shall be no reduction in basis under section 961(b) of such Code on account of an exclusion attributable to the inclusion of such income).

(4) RECOGNITION OF GAIN.—For purposes of paragraph (1), if the foreign corporation referred to in subsection (a) transfers any property acquired by such foreign corporation in the transaction referred to in subsection (a) (or transfers any other property the basis of which is determined in whole or in part by reference to the basis of property so acquired) and (but for this paragraph) there is not full recognition of gain on such transfer, the excess (if any) of—

(A) the fair market value of the property transferred, over

(B) its adjusted basis,

shall be treated as gain from the sale or exchange of such property and shall be recognized notwithstanding any other provision of law. Proper adjustment shall be made to the basis of any such property for gain recognized under the preceding sentence.

(c) DEFINITIONS.—For purposes of this section—

(1) COMMON PARENT.—The term "common parent" means the common parent of the affiliated group which included the domestic corporation referred to in subsection (a)(1).

(2) QUALIFIED EXCESS LOSS ACCOUNT.—The term "qualified excess loss account" means any excess loss account (within the meaning of the consolidated return regulations) to the extent such account is attributable—

(A) to taxable years beginning before January 1, 1988, and

(B) to periods during which the domestic corporation was subject to an income tax of a foreign country on its income on a residence basis or without regard to whether such income is from sources in or outside of such foreign country.

The amount of such account shall be determined as of immediately after the transaction referred to in subsection (a) and without, except as provided in subsection (b), diminution for any future adjustment.

(3) NET AMOUNT.—The net amount of any item of income is the amount of such income reduced by allocable deductions as determined under the rules of section 954(b)(5) of the 1986 Code.

(4) SECOND SAME COUNTRY CORPORATION MAY BE TREATED AS DOMESTIC CORPORATION IN CERTAIN CASES.—If—

(A) another foreign corporation acquires from the common parent stock of the foreign corporation referred to in subsection (a) after the transaction referred to in subsection (a),

(B) both of such foreign corporations are subject to the income tax of the same foreign country on a residence basis, and

(C) such common parent complies with such reporting requirements as the Secretary of the Treasury or his delegate may prescribe for purposes of this paragraph,

such other foreign corporation shall be treated as a domestic corporation in determining whether the foreign corporation referred to in subsection (a) is a member of the affiliated group referred to in subsection (a) (and the rules of subsection (b) shall apply (i) to any gain of such other foreign corporation on any disposition of such stock, and (ii) to any other income of such other foreign corporation except to the extent it establishes to the satisfaction of the Secretary of the Treasury or his delegate that such income is not attributable to property acquired from the foreign corporation referred to in subsection (a)).

SEC. 746. TREATMENT OF INSURANCE COMPANIES UNDER CHAIN DEFICIT RULE.

(a) IN GENERAL.—Subparagraph (B) of section 952(c)(1) of the 1986 Code is amended by adding at the end thereof the following new clause:

"(vii) SPECIAL RULES FOR INSURANCE INCOME.—

"(I) IN GENERAL.—An election may be made under this clause to have section 953(a) applied for purposes of this title without regard to the same country exception under paragraph (1)(A) thereof. Such election, once made, may be revoked only with the consent of the Secretary.

"(II) SPECIAL RULES FOR AFFILIATED GROUPS.—In the case of an affiliated group of corporations (within the meaning of section 1504 but without regard to section 1504(b)(3) and by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears), no election may be made under subclause (I) for any controlled foreign corporation unless such election is made for all other controlled foreign corporations who are members of such group and who were created or organized under the laws of the same country as such controlled foreign corporation. For purposes of clause (v), in determining whether any controlled corporation described in the preceding sentence is a qualified insurance company, all such corporations shall be treated as 1 corporation."

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendments made by section 1221(f) of the Reform Act.

SEC. 747. INVESTMENT IN QUALIFIED CARIBBEAN BASIN COUNTRIES.

(a) IN GENERAL.—Subparagraph (B) of section 936(d)(4) of the 1986 Code is amended by inserting "and the Virgin Islands" after "section 274(h)(6)(A)".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to investments made after the date of the enactment of this Act.

SEC. 748. TREATMENT OF CERTAIN INSURANCE BRANCHES OF FOREIGN CORPORATIONS.

(a) GENERAL RULE.—Section 964 of the 1986 Code (relating to miscellaneous provisions) is amended by adding at the end thereof the following new subsection:

"(d) TREATMENT OF CERTAIN BRANCHES.—

"(1) IN GENERAL.—For purposes of this chapter, section 6038, section 6046, and such other provisions as may be specified in regulations—

"(A) a qualified insurance branch of a controlled foreign corporation shall be treated as a separate foreign corporation created under the laws of the foreign country with respect to which such branch qualifies under paragraph (2), and

"(B) except as provided in regulations, any amount directly or indirectly transferred or credited from such branch to one or more other accounts of such controlled foreign corporation shall be treated as a dividend paid to such controlled foreign corporation.

"(2) QUALIFIED INSURANCE BRANCH.—For purposes of paragraph (1), the term 'qualified insurance branch' means any branch of a controlled foreign corporation which is licensed and predominantly engaged on a permanent basis in the active conduct of an insurance business in a foreign country if—

"(A) separate books and accounts are maintained for such branch,

"(B) the principal place of business of such branch is in such foreign country,

"(C) such branch would be taxable under subchapter L if it were a separate domestic corporation, and

"(D) an election under this paragraph applies to such branch.

An election under this paragraph shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

"(3) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years of foreign corporations beginning after December 31, 1988.

SEC. 749. TREATMENT OF CERTAIN UNITED STATES OBLIGATIONS HELD BY POSSESSION BANKS.

(a) IN GENERAL.—Subsection (e) of section 882 of the 1986 Code is amended—

(1) by inserting "which is not portfolio interest (as defined in section 881(c)(2))" before "shall", and

(2) by striking out the last sentence thereof.

(b) EXCLUSION FROM BRANCH PROFITS TAX.—Paragraph (2) of section 884(d) of the 1986 Code is amended by striking out "or" at the end of subparagraph (C), by striking out the period at the end of subparagraph (D) and inserting in lieu thereof ", or" and by inserting after subparagraph (D) the following new subparagraph:

"(E) income treated as effectively connected with the conduct of a trade or business within the United States under section 882(e)."

(c) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 1988.

SEC. 750. NONCONVENTIONAL FUELS CREDIT.

(a) IN GENERAL.—Section 53(d)(1)(B) of the 1986 Code (relating to credit not allowed for exclusion preferences) is amended by adding at the end thereof the following new clause:

"(iii) SPECIAL RULE.—The adjusted net minimum tax for the taxable year shall be increased by the amount of the credit not allowed under section 29 (relating to credit for producing fuel from a nonconventional source) solely by reason of the application of section 29(b)(5)(B)."

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendments made by section 701 of the Tax Reform Act of 1986.

SEC. 751. ONE-YEAR EXTENSION OF CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.

Clauses (i) and (ii) of section 29(f)(1)(A) of the 1986 Code (relating to application of section) are each amended by striking out "January 1, 1990" and inserting in lieu thereof "January 1, 1991".

SEC. 752. SMALL PRODUCERS EXEMPT FROM OCCUPATIONAL TAX ON DISTILLED SPIRITS PLANTS.

(a) IN GENERAL.—Section 5081 of the 1986 Code (relating to imposition and rate of occupational tax) is amended by adding at the end thereof the following new subsection:

"(c) EXEMPTION FOR SMALL PRODUCERS.—Subsection (a) shall not apply with respect to any taxpayer who is a proprietor of an eligible distilled spirits plant (as defined in section 5181(c)(4)."

(b) CONFORMING AMENDMENT.—Paragraph (1) of section 5081(b) of the 1986 Code (relating to reduced rates for small propri-

etors) is amended by inserting "not described in subsection (c)" after "taxpayer".

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on July 1, 1989.

SEC. 753. CERTAIN REPLEDGES PERMITTED.

(a) GENERAL RULE.—For purposes of section 453A(d) of the 1986 Code (relating to pledges, etc., of installment obligations), the refinancing of any indebtedness which was outstanding on December 17, 1987, and which was secured on that date and all times thereafter before such refinancing by a pledge of an installment obligation shall be treated as a continuation of the refinanced indebtedness if—

(1) the taxpayer is required by the creditor of the indebtedness to be refinanced to refinance such indebtedness, and

(2) the refinancing is not with such creditor or a person related to such creditor.

(b) LIMITATION ON PRINCIPAL AMOUNT.—Subsection (a) shall not apply to the extent that the principal amount of the indebtedness resulting from the refinancing exceeds the principal amount of the refinanced indebtedness immediately before the refinancing.

(c) LIMITATION ON EXTENSION OF TERM OF REFINANCING.—Notwithstanding subsection (a), if the term of the indebtedness resulting from the refinancing exceeds the term of the refinanced indebtedness, upon the expiration of the term of the refinanced indebtedness as in effect before the refinancing, the outstanding balance of the indebtedness resulting from the refinancing shall be treated as a payment received on any installment obligation which secures such indebtedness.

(d) EFFECTIVE DATE.—This section shall apply as if included in the provisions of section 10202 of the Revenue Act of 1987.

SEC. 754. TREATMENT OF INDIRECT HOLDINGS THROUGH TRUSTS UNDER SECTION 448 OF THE 1986 CODE.

(a) GENERAL RULE.—Paragraph (2) of section 448(d) of the 1986 Code (defining qualified personal service corporation) is amended by adding at the end thereof the following new sentence:

"To the extent provided in regulations which shall be prescribed by the Secretary, indirect holdings through a trust shall be taken into account under subparagraph (B)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1986.

SEC. 755. JURY DUTY PAY REMITTED TO AN INDIVIDUAL'S EMPLOYER ALLOWED AS A DEDUCTION IN COMPUTING GROSS INCOME.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the 1986 Code (relating to additional itemized deductions for individuals) is amended by redesignating section 220 as section 221 and by inserting after section 219 the following new section:

"SEC. 220. JURY DUTY PAY REMITTED TO EMPLOYER.

"If—

"(1) an individual receives payment for the discharge of jury duty, and

"(2) the employer of such individual requires the individual to remit any portion of such payment to the employer in exchange for payment by the employer of compensation for the period the individual was performing jury duty,

then there shall be allowed as a deduction the amount so remitted.".

(b) DEDUCTION ALLOWED IN ARRIVING AT ADJUSTED GROSS INCOME.—Subsection (a) of section 62 of the 1986 Code (defining adjusted gross income) is amended by inserting after paragraph (12) the following new paragraph:

"(13) JURY DUTY PAY REMITTED TO EMPLOYER.—The deduction allowed by section 220.".

(c) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of the 1986 Code is amended by striking out the item relating to section 220 and inserting in lieu thereof the following new items:

"Sec. 220. Jury duty pay remitted to employer.

"Sec. 221. Cross references.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply as if included in the amendments made by section 132 of the Tax Reform Act of 1986.

SEC. 756. EXCLUDE STRUCTURED SETTLEMENT ARRANGEMENTS FROM MINIMUM TAX.

(a) IN GENERAL.—The last sentence of section 56(g)(4)(B)(iii) of the 1986 Code (as amended by title I) is amended to read as follows: "The preceding sentence shall not apply to any annuity contract which is held under a plan described in section 403(a) or which is described in section 72(u)(3)(C)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 701 of the Reform Act.

SEC. 757. CERTAIN CREDITOR RIGHTS PERMITTED UNDER STRUCTURED SETTLEMENT RULES.

(a) IN GENERAL.—Subsection (c) of section 130 of the 1986 Code (relating to certain personal injury liability assignments) is amended—

(1) by striking out subparagraph (C) of paragraph (2) and redesignating subparagraphs (D) and (E) of paragraph (2) as subparagraphs (C) and (D), respectively, and

(2) by adding at the end thereof the following new sentence:

"The determination for purposes of this chapter of when the recipient is treated as having received any payment with respect to which there has been a qualified assignment shall be made without regard to any provision of such assignment which grants the recipient rights as a creditor greater than those of a general creditor."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to assignments after the date of the enactment of this Act.

SEC. 758. NONPROFIT HOSPITAL INSURERS.

(a) IN GENERAL.—In the case of taxable years beginning after December 31, 1986, and before January 1, 1989, for purposes of determining the amount of the deduction under section 832(b)(5)(A)(ii) of the 1986 Code of any qualified nonprofit hospital insurer who elects the application of this section shall be increased by an amount equal to 20 percent (10 percent in the case of a taxable year beginning in 1988) of the excess (if any) of—

(1) the undiscounted unpaid losses determined under section 846(b) of the 1986 Code for such taxable year, over

(2) the discounted paid losses determined under section 846(a) of the 1986 Code for such taxable year.

(b) QUALIFIED NONPROFIT HOSPITAL INSURER.—For purposes of this section, the term "qualified nonprofit hospital insurer" means any domestic corporation if for the taxable year to which the election under subsection (a) applies—

(1) 75 percent or more of the value or the voting rights of such corporation are owned, or considered as owned under section 267(c) of the 1986 Code, by nonprofit health care facilities or by a trade association of such facilities,

(2) a majority of the insurance or reinsurance provided by such corporation covers risk of nonprofit health care facilities, and

(3) at least 75 percent of the insurance business of such corporation is medical malpractice or general liability insurance.

For purposes of this subsection, the term "voting rights" includes voting rights exercisable by policyholders of a mutual or reciprocal insurer or reinsurer.

(c) ELECTION.—An election under this section shall be made on the return of income tax for the taxpayer's first taxable year beginning after December 31, 1986.

(d) FRESH START PROVISIONS.—If an election is made under this section by an insurer, then paragraphs (2) and (3) of section 1023(e) of the Tax Reform Act of 1986 shall be applied with respect to such insurer by substituting for each date or calendar year contained therein the date or year which is 2 years later.

SEC. 759. APPLICATION OF SECTION 912 TO JUDICIAL EMPLOYEES.

(a) IN GENERAL.—Section 912(2) of the 1986 Code is amended by inserting "(or in the case of judicial officers or employees of the United States, in accordance with rules similar to such regulations)" after "President".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to allowances received after October 12, 1987, in taxable years ending after such date.

SEC. 760. BUSINESS USE OF AUTOMOBILES BY RURAL MAIL CARRIERS.

(a) GENERAL RULE.—In the case of any employee of the United States Postal Service who performs services involving the collection and delivery of mail on a rural route, such employee shall be permitted to compute the amount allowable as a deduction under chapter 1 of the Internal Revenue Code of 1986 for the use of an automobile in performing such services by using a standard mileage rate for all miles of such use equal to 150 percent of the basic standard rate.

(b) SUBSECTION (a) NOT TO APPLY IF EMPLOYEE CLAIMS DEPRECIATION DEDUCTIONS FOR AUTOMOBILE.—Subsection (a) shall not apply with respect to any automobile if, for any taxable year beginning after December 31, 1987, the taxpayer claimed depreciation deductions for such automobile.

(c) BASIC STANDARD RATE.—For purposes of this section, the term "basic standard rate" means the standard mileage rate which is prescribed by the Secretary of the Treasury or his delegate for computing the amount of the deduction for the business use of an automobile and which—

(1) is in effect at the time of the use referred to in subsection (a),

(2) applies to an automobile which is not fully depreciated, and

(3) applies to the first 15,000 miles (or such other number as the Secretary of the Treasury or his delegate may hereafter prescribe) of business use during the taxable year.

(d) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years beginning after December 31, 1987.

SEC. 761. ETHYL ALCOHOL AND MIXTURES FOR FUEL USE.

Section 1910 of the Omnibus Trade and Competitiveness Act of 1988 is amended by adding at the end thereof the following new subsection:

"(c) APPLICATION OF AMENDMENTS.—The amendments made by this section shall apply with respect to ethyl alcohol, and mixtures of ethyl alcohol, entered—

"(1) during the period beginning on August 23, 1988, and ending on the date of enactment of the Technical Corrections Act of 1988, and

"(2) after the date, if any, on which the Secretary of Agriculture, the Secretary of Energy, and the Secretary of the Treasury, acting jointly, submit to the Congress, and publish in the Federal Register, a written statement certifying that the domestic ethyl alcohol production industry is not fully meeting demand for ethyl alcohol in the United States and that the quantity of ethyl alcohol, and mixtures of ethyl alcohol, that would be imported into the customs territory of the United States free of duty by reason of the amendments made by this section is necessary to maintain adequate supplies of ethyl alcohol for consumers in the United States.".

SEC. 762. CERTAIN EMPLOYER PENSION CONTRIBUTIONS NOT INCLUDED IN FICA WAGE BASE.

Any State or political subdivision thereof which—

(1) has relied in good faith on any letter ruling of the Internal Revenue Service issued after December 31, 1983, maintaining that any amount treated as an employer contribution under section 414(h)(2) of the Internal Revenue Code of 1986 is excluded from the definition of "wages" for purposes of tax liability under section 3121(v)(1)(B) of such Code, and

(2) has not paid such taxes based on such reliance,

shall be relieved of any such liability for the period ending with the earlier of the date of the enactment of this Act or receipt of a notice of revocation of the letter ruling by the Internal Revenue Service.

Subtitle C—Extension of Expiring Provisions and Other Substantive Provisions

PART I—TAXPAYER BILL OF RIGHTS

SEC. 763. SHORT TITLE.

This part may be cited as the "Omnibus Taxpayer Bill of Rights".

Subpart A—Taxpayer Rights

SEC. 764. DISCLOSURE OF RIGHTS OF TAXPAYERS.

(a) IN GENERAL.—The Secretary of the Treasury shall, as soon as practicable, but not later than 180 days after the date of the enactment of this Act, prepare a statement which sets forth in simple and nontechnical terms—

(1) the rights of a taxpayer and the obligations of the Internal Revenue Service (hereinafter in this section referred to as the "Service") during an audit;

(2) the procedures by which a taxpayer may appeal any adverse decision of the Service (including administrative and judicial appeals);

(3) the procedures for prosecuting refund claims and filing of taxpayer complaints; and

(4) the procedures which the Service may use in enforcing the internal revenue laws (including assessment, jeopardy assessment, levy and distraint, and enforcement of liens).

(b) TRANSMISSION TO COMMITTEES OF CONGRESS.—The Secretary of the Treasury shall transmit drafts of the statement required under subsection (a) (or proposed revisions of any such statement) to the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the Joint Committee on Taxation on the same day. Any draft (or any revision of a draft) of the statement may not be distributed under subsection (c) until 90 days after the date it was transmitted to such committees.

(c) DISTRIBUTION.—The statement prepared in accordance with subsections (a) and (b) shall be distributed by the Secretary of the Treasury to all taxpayers the Secretary contacts with respect to the determination or collection of any tax (other than by providing tax forms). The Secretary shall take such actions as the Secretary deems necessary to ensure that such distribution does not result in multiple statements being sent to any one taxpayer.

SEC. 765. PROCEDURES INVOLVING TAXPAYER INTERVIEWS.

(a) IN GENERAL.—Chapter 77 of the 1986 Code (relating to miscellaneous provisions) is amended by adding at the end thereof the following new section:

"SEC. 7520. PROCEDURES INVOLVING TAXPAYER INTERVIEWS.

"(a) RECORDING OF INTERVIEWS.—

"(1) RECORDING BY TAXPAYER.—Any officer or employee of the Internal Revenue Service in connection with any in-person interview with any taxpayer relating to the determination or collection of any tax shall, upon advance request of such taxpayer, allow the taxpayer to make an audio recording of such interview at the taxpayer's own expense and with the taxpayer's own equipment.

"(2) RECORDING BY IRS OFFICER OR EMPLOYEE.—An officer or employee of the Internal Revenue Service may record any interview described in paragraph (1) if such officer or employee—

"(A) informs the taxpayer of such recording prior to the interview, and

"(B) upon request of the taxpayer, provides the taxpayer with a transcript or copy of such recording but only if the taxpayer provides reimbursement for the cost of the transcription and reproduction of such transcript or copy.

"(b) SAFEGUARDS.—

"(1) EXPLANATIONS OF PROCESSES.—An officer or employee of the Internal Revenue Service shall before or at an initial interview provide to the taxpayer—

"(A) in the case of an audit interview, an explanation of the audit process and the taxpayer's rights under such process, or

"(B) in the case of a collection interview, an explanation of the collection process and the taxpayer's rights under such process.

Such officer or employee shall notify the taxpayer at such interview if the case has been referred to the Criminal Investigation Division of the Internal Revenue Service.

"(2) RIGHT OF CONSULTATION.—If the taxpayer clearly states to an officer or employee of the Internal Revenue Service at any time during any interview (other than an interview initiated by an administrative summons issued under subchapter A of chapter 78) that the taxpayer wishes to consult with an attorney, certified public accountant, enrolled agent, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service, such officer or employee shall suspend such interview regardless of whether the taxpayer may have answered one or more questions.

"(c) REPRESENTATIVES HOLDING POWER OF ATTORNEY.—Any attorney, certified public accountant, enrolled agent, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the taxpayer may be authorized by such taxpayer to represent the taxpayer in any interview described in subsection (a). An officer or employee of the Internal Revenue Service may not require a taxpayer to accompany the representative in the absence of an administrative summons issued to the taxpayer under subchapter A of chapter 78. Such an officer or employee, with the consent of the immediate supervisor of such officer or employee, may notify the taxpayer directly that such officer or employee believes such representative is responsible for unreasonable delay or hindrance of an Internal Revenue Service examination or investigation of the taxpayer.

"(d) SECTION NOT TO APPLY TO CERTAIN INVESTIGATIONS.—This section shall not apply to criminal investigations or investigations relating to the integrity of any officer or employee of the Internal Revenue Service."

(b) REGULATIONS WITH RESPECT TO TIME AND PLACE OF EXAMINATION.—The Secretary of the Treasury or the Secretary's delegate shall issue regulations to implement subsection (a) of section 7605 of the 1986 Code (relating to time and place of examination) within 1 year after the date of the enactment of this Act.

(c) CLERICAL AMENDMENT.—The table of sections for chapter 77 of the 1986 Code is amended by adding at the end thereof the following new item:

"Sec. 7520. Procedures involving taxpayer interviews."

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (c) shall apply to interviews conducted on or after the date which is 30 days after the date of the enactment of this Act.

SEC. 766. TAXPAYERS MAY RELY ON WRITTEN ADVICE OF INTERNAL REVENUE SERVICE.

(a) IN GENERAL.—Section 6404 of the 1986 Code (relating to abatements) is amended by adding at the end thereof the following new subsection:

"(f) ABATEMENT OF ANY PENALTY OR ADDITION TO TAX ATTRIBUTABLE TO ERRONEOUS WRITTEN ADVICE BY THE INTERNAL REVENUE SERVICE.—

"(1) IN GENERAL.—The Secretary shall abate any portion of any penalty or addition to tax attributable to erroneous advice furnished to the taxpayer in writing by an officer or employee of the Internal Revenue Service, acting in such officer's or employee's official capacity.

"(2) LIMITATIONS.—Paragraph (1) shall apply only if—

"(A) the written advice was reasonably relied upon by the taxpayer and was in response to a specific written request of the taxpayer, and

"(B) the portion of the penalty or addition to tax did not result from a failure by the taxpayer to provide adequate or accurate information."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to advice requested on or after the date of the enactment of this Act.

SEC. 787. TAXPAYER ASSISTANCE ORDERS.

(a) IN GENERAL.—Subchapter A of chapter 80 of the 1986 Code (relating to general rules for application of the internal revenue laws) is amended by adding at the end thereof the following new section:

"SEC. 7811. TAXPAYER ASSISTANCE ORDERS.

"(a) AUTHORITY TO ISSUE.—Upon application filed by a taxpayer with the Office of Ombudsman (in such form, manner, and at such time as the Secretary shall by regulations prescribe), the Ombudsman may issue a Taxpayer Assistance Order if, in the determination of the Ombudsman, the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Secretary.

"(b) TERMS OF A TAXPAYER ASSISTANCE ORDER.—The terms of a Taxpayer Assistance Order may require the Secretary—

"(1) to release property of the taxpayer levied upon, or

"(2) to cease any action, or refrain from taking any action, with respect to the taxpayer under—

"(A) chapter 64 (relating to collection),

"(B) subchapter B of chapter 70 (relating to bankruptcy and receiverships),

"(C) chapter 78 (relating to discovery of liability and enforcement of title), or

"(D) any other provision of law which is specifically described by the Ombudsman in such order.

"(c) AUTHORITY TO MODIFY OR RESCIND.—Any Taxpayer Assistance Order issued by the Ombudsman under this section may be modified or rescinded only by the Ombudsman, a district director, or superiors of such director.

"(d) SUSPENSION OF RUNNING OF PERIOD OF LIMITATION.—The running of any period of limitation with respect to any action described in subsection (b) shall be suspended for—

"(1) the period beginning on the date of the taxpayer's application under subsection (a) and ending on the date of the Ombudsman's decision with respect to such application, and

"(2) any period specified by the Ombudsman in a Taxpayer Assistance Order.

"(e) INDEPENDENT ACTION OF OMBUDSMAN.—Nothing in this section shall prevent the Ombudsman from taking any action in the absence of an application under subsection (a).

"(f) OMBUDSMAN.—For purposes of this section, the term 'Ombudsman' includes any designee of the Ombudsman."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 80 of the 1986 Code is amended by adding at the end thereof the following new item:

"Sec. 7811. Taxpayer Assistance Orders."

(c) ISSUANCE OF REGULATIONS.—The Secretary of the Treasury or the Secretary's delegate shall issue such regulations as the Secretary deems necessary within 90 days of the date of the enactment of this Act in order to carry out the purposes of section 7811 of the 1986 Code (as added by this section) and to ensure taxpayers uniform access to administrative procedures.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 788. OFFICE OF INSPECTOR GENERAL.

(a) IN GENERAL.—Paragraph (1) of section 2 of the Inspector General Act of 1978 (5 U.S.C. App. 3) (relating to the purpose and establishment of offices of inspector general and the departments and agencies involved) is amended to read as follows:

"(1) to conduct and supervise audits and investigations relating to the programs and operations of the establishments listed in section 11(2);".

(b) ADDITION OF DEPARTMENT OF THE TREASURY TO LIST OF COVERED ESTABLISHMENTS.—Section 11 of such Act (relating to definitions) is amended—

(1) by striking out "or Transportation" in paragraphs (1) and (2) and inserting in lieu thereof "Transportation, or the Treasury",

(2) by inserting "or the Commissioner of Internal Revenue" before "as the case may be", and

(3) by inserting "Internal Revenue Service" before "as the case may be".

(c) TRANSFER OF EXISTING AUDIT AND INVESTIGATION UNITS.—Paragraph (1) of section 9(a) of such Act (relating to transfer of functions) is amended—

(1) by redesignating subparagraphs (I), (J), (K), (L), (M), and (N) as subparagraphs (K), (L), (M), (N), (O), and (P), respectively, and

(2) by inserting after subparagraph (H) the following new subparagraphs:

"(I) of the Department of the Treasury, the office of that department referred to as the 'Office of Inspector General', and, notwithstanding any other provision of law, that portion of each of the offices of that department referred to as the 'Office of Internal Affairs, Bureau of Alcohol, Tobacco, and Firearms', the 'Office of Internal Affairs, United States Customs Service', and the 'Office of Inspections, United States Secret Service' which is engaged in internal audit activities;

"(J) of the Department of the Treasury, in the Internal Revenue Service of such department, the office of that service referred to as the 'Office of Assistant Commissioner (Inspection), Internal Revenue Service';".

(d) SPECIAL PROVISIONS RELATING TO DEPARTMENT OF THE TREASURY.—The Inspector General Act of 1978 is amended by inserting after section 8A the following new section:

"SPECIAL PROVISIONS REGARDING THE DEPARTMENT OF THE TREASURY

"SEC. 8B. (a) In carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of the Treasury shall have oversight responsibility for the internal investigations performed by the Office of Internal Affairs of the Bureau of Alcohol, Tobacco and Firearms, the Office of Internal Affairs of the United States Customs Service, and the Office of Inspections of the United States Secret Service. The head of each such office shall report to the Inspector General the significant investigative activities being carried out by such office.

"(b) Notwithstanding subsection (a), the Inspector General of the Department of the Treasury may conduct an investigation of any officer or employee of such Department (other than the Internal Revenue Service) if—

"(1) the Secretary of the Treasury or the Deputy Secretary of the Treasury requests the Inspector General to conduct an investigation;

"(2) the investigation concerns senior officers or employees of the Department of the Treasury, including officers appointed by the President, members of the Senior Executive Service, and individuals in positions classified at grade GS-15 of the General Schedule or above or classified at a grade equivalent to such grade or above such equivalent grade; or

"(3) the investigation involves alleged notorious conduct or any other matter which, in the opinion of the Inspector General, is especially sensitive or of departmental significance.

"(c) If the Inspector General of the Department of the Treasury initiates an investigation under subsection (b), and the officer or employee of the Department of the Treasury subject to investigation is employed by or attached to a bureau or service referred to in subsection (a), the Inspector General may provide the head of the office of such bureau or service referred to in subsection (a) with written notice that the Inspector General has initiated such an investigation. If the Inspector General issues a notice under the preceding sentence, no other investigation shall be initiated into the matter under investigation by the Inspector General and any other investigation of such matter shall cease.

"(d)(1) Notwithstanding the last two sentences of section 3(a), the Inspector General of the Department of the Treasury and the Inspector General of the Internal Revenue Service shall be under the authority, direction, and control of the Secretary of the Treasury and the Commissioner of Internal Revenue, respectively, with respect to audits or investigations, or the issuance of subpenas, which require access to information concerning—

"(A) ongoing criminal investigations or proceedings;

"(B) sensitive undercover operations;

"(C) the identity of confidential sources, including protected witnesses;

"(D) deliberations and decisions on policy matters, including documented information used as a basis for making policy decisions, the disclosure of which could reasonably be expected to have a significant influence on the economy or market behavior;

"(E) intelligence or counterintelligence matters; or

"(F) other matters the disclosure of which would constitute a serious threat to national security or to the protection of any person or property authorized protection by section 3056 of title 18, United States Code, section 202 of title 8, United States Code, or any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note; Public Law 94-524).

"(2) With respect to the information described in paragraph (1), the Secretary of the Treasury or the Commissioner of Internal Revenue may prohibit the Inspector General of the Department of the Treasury or the Inspector General of the Internal Revenue Service, respectively, from initiating, carrying out, or completing any audit or investigation, or from issuing any subpena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpena, if the Secretary or the Commissioner determines that such prohibition is necessary to preserve the confidentiality of or prevent the disclosure of any information described in paragraph (1).

"(3)(A) If the Secretary of the Treasury exercises any power under paragraph (1) or (2), the Secretary of the Treasury shall notify the Inspector General of the Department of the Treasury in writing of such exercise. Within 30 days after receipt of any such notice, the Inspector General of the Department of the Treasury shall transmit a copy of such notice to the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives, the Commit-

tee on Finance of the Senate, the Committee on Ways and Means of the House of Representatives, and the Joint Committee on Taxation, together with any comments the Inspector General deems appropriate.

"(B) If the Commissioner of Internal Revenue exercises any power under paragraph (1) or (2), the Commissioner shall notify the Inspector General of the Internal Revenue Service in writing of such exercise. Within 30 days after receipt of such notice, the Inspector General shall transmit a copy of such notice to the Committee on Governmental Affairs and the Committee on Finance of the Senate and to the Committee on Government Operations and the Committee on Ways and Means of the House of Representatives.

"(e) In addition to the standards prescribed by the first sentence of section 3(a), the Inspector General of the Internal Revenue Service shall at the time of appointment be in a career reserved position in the Senior Executive Service in the Internal Revenue Service as defined under section 3132(a)(8) of title 5, United States Code, with demonstrated ability in investigative techniques or internal audit functions with respect to the programs and operations of the Internal Revenue Service.

"(f)(1) In addition to the duties and responsibilities specified in this Act, the Inspector General of the Internal Revenue Service shall perform such duties and exercise such powers as may be prescribed by the Commissioner of Internal Revenue, to the extent such duties and powers are not inconsistent with the purposes of this Act.

"(2) No audit or investigation conducted by the Inspector General of the Department of the Treasury or the Inspector General of the Internal Revenue Service shall affect a final decision of the Secretary of the Treasury or his designee made pursuant to section 6201 of the Internal Revenue Code of 1986 or described in section 6406 of such Code."

(e) DISCLOSURE OF TAX RETURNS AND RETURN INFORMATION.—Section 5(e)(3) of the Inspector General Act of 1978 is amended by striking out "Nothing" in the first sentence and inserting in lieu thereof "Except to the extent provided in section 6103(f) of the Internal Revenue Code of 1986, nothing".

(f) CONFORMING AMENDMENT.—Section 5315 of title 5, United States Code (relating to positions of level IV) is amended by adding at the end thereof the following new items:

"Inspector General, Department of the Treasury.

"Inspector General, Internal Revenue Service."

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 769. BASIS FOR EVALUATION OF INTERNAL REVENUE SERVICE EMPLOYEES.

(a) IN GENERAL.—The Internal Revenue Service shall not use records of tax enforcement results—

(1) to evaluate enforcement officers, appeals officers, or reviewers, or

(2) to impose or suggest production quotas or goals.

(b) APPLICATION OF IRS POLICY STATEMENT.—The Internal Revenue Service shall not be treated as failing to meet the requirements of subsection (a) if the Service follows the policy statement of the Service regarding employee evaluation (as in effect on the date of the enactment of this Act) in a manner which does not violate subsection (a).

(c) CERTIFICATION.—Each district director shall certify quarterly by letter to the Commissioner of Internal Revenue that tax enforcement results are not used in a manner prohibited by subsection (a).

(c) EFFECTIVE DATE.—The provisions of this section shall apply to evaluations conducted on or after the date of the enactment of this Act.

SEC. 770. PROCEDURES RELATING TO INTERNAL REVENUE SERVICE REGULATIONS.

(a) IN GENERAL.—Section 7805 of the 1986 Code (relating to rules and regulations) is amended by adding at the end thereof the following new subsections:

"(e) TEMPORARY REGULATIONS.—

"(1) ISSUANCE.—Any temporary regulation issued by the Secretary shall also be issued as a proposed regulation.

"(2) 2-YEAR DURATION.—Any temporary regulation shall expire within 2 years after the date of issuance of such regulation.

"(f) IMPACT OF REGULATIONS ON SMALL BUSINESS REVIEWED.—After the publication of any proposed regulation or before the promulgation of any final regulation by the Secretary, the Secretary shall submit such regulation to the Administrator of the Small Business Administration for comment on the impact of such regulation on small business. The Administrator shall have 4 weeks from the date of submission to respond."

(b) EFFECTIVE DATE.—The provisions of this section shall apply to any regulation issued after the date of the enactment of this Act.

SEC. 771. CONTENT OF TAX DUE AND DEFICIENCY NOTICES.

(a) IN GENERAL.—Chapter 77 of the 1986 Code (relating to miscellaneous provisions), as amended by section 765(a), is further amended by adding at the end thereof the following new section:

"SEC. 7521. CONTENT OF TAX DUE AND DEFICIENCY NOTICES.

"Any tax due notice or deficiency notice, including notices described in sections 6155, 6212, and 6303, shall describe the basis for, and identify the amounts (if any) of, the tax due, interest, additional amounts, additions to the tax, and assessable penalties included in such notice. An inadequate description under the preceding sentence shall not invalidate such notice."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 of the 1986 Code, as amended by section 765(c), is further amended by adding at the end thereof the following new item:

"Sec. 7521. Content of tax due and deficiency notices."

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to mailings made after the date which is 180 days after the date of enactment of this Act.

SEC. 772. INSTALLMENT PAYMENT OF TAX LIABILITY.

(a) IN GENERAL.—Subchapter A of chapter 62 of the 1986 Code (relating to place and due date for payment of tax) is amended by adding at the end thereof the following new section:

"SEC. 6159. AGREEMENTS FOR PAYMENT OF TAX LIABILITY IN INSTALLMENTS.

"(a) AUTHORIZATION OF AGREEMENTS.—The Secretary is authorized to enter into written agreements with any taxpayer under which such taxpayer is allowed to satisfy liability for payment of any tax in installment payments if the Secretary determines that such agreement will facilitate collection of such liability.

"(b) EXTENT TO WHICH AGREEMENTS REMAIN IN EFFECT.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, any agreement entered into by the Secretary under subsection (a) shall remain in effect for the term of the agreement.

"(2) INADEQUATE INFORMATION OR JEOPARDY.—The Secretary may terminate any agreement entered into by the Secretary under subsection (a) if—

"(A) information which the taxpayer provided (upon request of the Secretary) to the Secretary prior to the date such agreement was entered into was inaccurate or incomplete, or

"(B) the Secretary believes that collection of any tax to which an agreement under this section relates is in jeopardy.

"(3) SUBSEQUENT CHANGE IN FINANCIAL CONDITIONS.—

"(A) IN GENERAL.—If the Secretary makes a determination that the financial condition of a taxpayer with whom the Secretary has entered into an agreement under subsection (a) has significantly changed, the Secretary may alter, modify, or terminate such agreement.

"(B) NOTICE.—Action may be taken by the Secretary under subparagraph (A) only if—

"(i) notice of such determination is provided to the taxpayer no later than 30 days prior to the date of such action, and

"(ii) such notice includes the reasons why the Secretary believes a significant change in the financial condition of the taxpayer has occurred.

"(4) FAILURE TO PAY AN INSTALLMENT OR ANY OTHER TAX LIABILITY WHEN DUE OR TO PROVIDE REQUESTED FINANCIAL INFORMATION.—The Secretary may alter, modify, or terminate an agreement entered into by the Secretary under subsection (a) in the case of the failure of the taxpayer—

"(A) to pay any installment at the time such installment payment is due under such agreement,

"(B) to pay any other tax liability at the time such liability is due, or

"(C) to provide a financial condition update as requested by the Secretary."

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 6601(b) of the 1986 Code (relating to last day prescribed for payment) is amended by inserting "or any installment agreement entered into under section 6159" after "time for payment".

(2) The table of sections for subchapter A of chapter 62 of the 1986 Code is amended by adding at the end thereof the following new item:

"Sec. 6159. Agreements for payment of tax liability in installments."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into after the date of the enactment of this Act.

SEC. 773. ASSISTANT COMMISSIONER FOR TAXPAYER SERVICES.

(a) IN GENERAL.—Section 7802 of the 1986 Code (relating to Commissioner of Revenue; Assistant Commissioner (Employee Plans and Exempt Organizations) is amended by adding at the end thereof the following new subsection:

"(c) ASSISTANT COMMISSIONER (TAXPAYER SERVICES).—There is established within the Internal Revenue Service an office to be known as the 'Office for Taxpayers Services' to be under the supervision and direc-

tion of an Assistant Commissioner of the Internal Revenue. The Assistant Commissioner shall be responsible for telephone, walk-in, and educational services, and the design and production of tax and informational forms."

(b) ANNUAL REPORTS TO CONGRESS.—The Assistant Commissioner (Taxpayer Services) and the Taxpayer Ombudsman for the Internal Revenue Service shall jointly make an annual report regarding the quality of taxpayer services provided. Such report shall be made to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

Subpart B—Levy and Lien Provisions

SEC. 774. LEVY AND DISTRAINT.

(a) NOTICE.—Section 6331(d) of the 1986 Code (relating to levy and distraint) is amended—

(1) by striking out "10 days" in paragraph (2) and inserting in lieu thereof "30 days",

(2) by striking out "10-DAY REQUIREMENT" in the heading of paragraph (2) and inserting in lieu thereof "30-DAY REQUIREMENT", and

(3) by adding at the end thereof the following new paragraph:

"(4) INFORMATION INCLUDED WITH NOTICE.—The notice required under paragraph (1)—

"(A) shall cite the sections of this title which relate to levy on property, sale of property, release of lien on property, and redemption of property, and

"(B) shall include a description of—

"(i) the provisions of this title relating to levy and sale of property,

"(ii) the procedures applicable to the levy and sale of property under this title,

"(iii) the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals,

"(iv) the alternatives available to taxpayers which could prevent levy on the property (including installment agreements under section 6159),

"(v) the provisions of this title relating to redemption of property and release of liens on property, and

"(vi) the procedures applicable to the redemption of property and the release of a lien on property under this title."

(b) EFFECT OF LEVY ON SALARY AND WAGES.—

(1) IN GENERAL.—Subsection (e) of section 6331 of the 1986 Code (relating to levy and distraint) is amended to read as follows:

"(e) CONTINUING LEVY ON SALARY AND WAGES.—The effect of a levy on salary or wages payable to or received by a taxpayer shall be continuous from the date such levy is first made until such levy is released under section 6343."

(2) CROSS REFERENCE.—Section 6331(f) of the 1986 Code (relating to cross references) is amended by adding at the end thereof the following new paragraph:

"(3) For release and notice of release of levy, see section 6343."

(c) PROPERTY EXEMPT FROM LEVY.—

(1) FUEL, PROVISIONS, FURNITURE, PERSONAL EFFECTS, BOOKS, TOOLS, AND MACHINERY.—Section 6334 of the 1986 Code (relating to property exempt from levy) is amended by adding at the end thereof the following new subsection:

"(e) ADJUSTMENTS FOR INFLATION FOR CERTAIN PROPERTY.—In the case of calendar years 1989 and 1990, each dollar amount contained in paragraphs (2) and (3) of subsection (a) shall be increased by an amount equal to—

"(1) such dollar amounts, multiplied by

"(2) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year.

In the case of any calendar year after 1990, such dollar amounts shall be such dollar amounts in effect in 1990."

(2) WAGES, SALARY, AND OTHER INCOME.—

(A) INCREASE IN AMOUNT EXEMPT.—Paragraph (1) of section 6334(d) of the 1986 Code (relating to exempt amount of wages, salary, or other income) is amended to read as follows:

"(1) INDIVIDUALS ON WEEKLY BASIS.—In the case of an individual who is paid or receives all of his wages, salary, and other income on a weekly basis, the amount of the wages, salary, and other income payable to or received by him during any week which is exempt from levy under subsection (a)(9) shall be the exempt amount."

(B) EXEMPT AMOUNT DEFINED.—Subsection (d) of section 6334 of the 1986 Code (relating to property exempt from levy) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) EXEMPT AMOUNT.—For purposes of paragraph (1), the term 'exempt amount' means an amount equal to—

"(A) the sum of—

"(i) the standard deduction, and

"(ii) the aggregate amount of the deductions for personal exemptions allowed the taxpayer under section 151 in the taxable year in which such levy occurs, divided by

"(B) 52."

(3) PROPERTY EXEMPT IN ABSENCE OF APPROVAL OR JEOPARDY.—

(A) IN GENERAL.—Subsection (a) of section 6334 of the 1986 Code (relating to property exempt from levy) is amended by adding at the end thereof the following new paragraph:

"(12) PROPERTY EXEMPT IN ABSENCE OF CERTAIN APPROVAL OR JEOPARDY.—Except to the extent provided in subsection (f)—

"(A) the principal residence of the taxpayer (within the meaning of section 1034), and

"(B) any tangible personal property essential in carrying on the trade or business of the taxpayer, but only if levy on such tangible personal property would prevent the taxpayer from carrying on such trade or business."

(B) LEVY PERMITTED IN CASE OF JEOPARDY OR APPROVAL BY CERTAIN OFFICIALS.—Section 6334 of the 1986 Code, as amended by paragraph (1), is amended by adding at the end thereof the following new subsection:

"(f) LEVY ALLOWED ON CERTAIN PROPERTY IN CASE OF JEOPARDY OR CERTAIN APPROVAL.—Property described in subsection (a)(12) shall not be exempt from levy if—

"(1) a district director or assistant district director of the Internal Revenue Service personally approves (in writing) the levy of such property, or

"(2) the Secretary finds that the collection of tax is in jeopardy."

(d) UNECONOMICAL LEVY; LEVY ON APPEARANCE DATE OF SUMMONS.—Section 6331 of the 1986 Code (relating to levy and distraint) is amended by redesignating subsection (f) as subsection (h) and by inserting after subsection (e) the following new subsections:

"(f) UNECONOMICAL LEVY.—No levy may be made on any property if the amount of the expenses which the Secretary estimates (at the time of levy) would be incurred by the Secretary with respect to the levy and sale of such property exceeds the fair market value of such property at the time of levy.

"(g) LEVY ON APPEARANCE DATE OF SUMMONS.—

"(1) IN GENERAL.—No levy may be made on the property of any person on any day on which such person (or officer or employee of such person) is required to appear in response to a summons issued by the Secretary for the purpose of collecting any underpayment of tax.

"(2) NO APPLICATION IN CASE OF JEOPARDY.—This subsection shall not apply if the Secretary finds that the collection of tax is in jeopardy."

(e) SURRENDER OF BANK ACCOUNTS SUBJECT TO LEVY ONLY AFTER 21 DAYS.—

(1) IN GENERAL.—Section 6332 of the 1986 Code (relating to surrender of property subject to levy) is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting after subsection (b) the following new subsection:

"(c) SPECIAL RULE FOR BANKS.—Any bank (as defined in section 408(n)) shall surrender (subject to an attachment or execution under judicial process) any deposits (including interest thereon) in such bank only after 21 days after service of levy."

(2) CONFORMING AMENDMENTS.—

(A) Subsection (a) of section 6332 of the 1986 Code is amended by striking out "subsection (b)" and inserting in lieu thereof "subsections (b) and (c)"

(B) Subsection (e) of section 6332 of the 1986 Code, as redesignated by subsection (a), is amended by striking out "subsection (c)(1)" and inserting in lieu thereof "subsection (d)(1)"

(f) RELEASE OF LEVY.—Subsection (a) of section 6343 of the 1986 Code (relating to release of levy) is amended to read as follows:

"(a) RELEASE OF LEVY AND NOTICE OF RELEASE.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, the Secretary shall release the levy upon all, or part of, the property or rights to property levied upon and shall promptly notify the person upon whom such levy was made (if any) that such levy has been released if—

"(A) the liability for which such levy was made is satisfied or becomes unenforceable by reason of lapse of time,

"(B) release of such levy will facilitate the collection of such liability,

"(C) the taxpayer has entered into an agreement under section 6159 to satisfy such liability by means of installment payments, unless such agreement provides otherwise,

"(D) the Secretary has determined that such levy is creating an economic hardship due to the financial condition of the taxpayer, or

"(E) the fair market value of the property exceeds such liability and release of the levy on a part of such property could be made without hindering the collection of such liability.

For purposes of subparagraph (C), the Secretary is not required to release such levy if such release would jeopardize the secured creditor status of the Secretary.

"(2) SUBSEQUENT LEVY.—The release of levy on any property under paragraph (1) shall not prevent any subsequent levy on such property."

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to levies issued 90 days after the date of the enactment of this Act.

SEC. 775. REVIEW OF JEOPARDY LEVY AND ASSESSMENT PROCEDURES.

(a) IN GENERAL.—Subsection (a)(1) of section 7429 of the 1986 Code (relating to review of jeopardy assessment procedures) is amended—

(1) by inserting "or levy is made under section 6331(a) less than 30 days after notice and demand for payment is made under section 6331(a)," after "6862,", and

(2) by inserting "or levy" after "such assessment".

(b) ADMINISTRATIVE DETERMINATIONS.—Paragraph (3) of section 7429(a) of the 1986 Code (relating to redetermination by the Secretary) is amended to read as follows:

"(3) REDETERMINATION BY SECRETARY.—After a request for review is made under paragraph (2), the Secretary shall determine—

"(A) whether or not—

"(i) the making of the assessment under section 6851, 6861, or 6862, as the case may be, is reasonable under the circumstances, and

"(ii) the amount so assessed or demanded as a result of the action taken under section 6851, 6861, or 6862 is appropriate under the circumstances, or

"(B) whether or not the levy described in subsection (a)(1) is reasonable under the circumstances."

(c) TAX COURT REVIEW JURISDICTION.—Subsection (b) of section 7429 of the 1986 Code is amended to read as follows:

"(b) JUDICIAL REVIEW.—

"(1) PROCEEDINGS PERMITTED.—Within 90 days after the earlier of—

"(A) the day the Secretary notifies the taxpayer of the Secretary's determination described in subsection (a)(3), or

"(B) the 16th day after the request described in subsection (a)(2) was made,

the taxpayer may bring a civil action against the United States for a determination under this subsection in the court with jurisdiction determined under paragraph (2).

"(2) JURISDICTION FOR DETERMINATION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the district courts of the United States shall have exclusive jurisdiction over any civil action for a determination under this subsection.

"(B) TAX COURT.—If a petition for a redetermination of a deficiency under section 6213(a) has been timely filed with the Tax Court before the making of an assessment or levy that is subject to the review procedures of this section, and 1 or more of the taxes and taxable periods before the Tax Court because of such petition is also included in the written statement that is provided to the taxpayer under subsection (a), then the Tax Court also shall have jurisdiction over any civil action for a determination under this subsection with respect to all the taxes and taxable periods included in such written statement.

"(3) DETERMINATION BY COURT.—Within 20 days after a proceeding is commenced under paragraph (1), the court shall determine—

"(A) whether or not—

"(i) the making of the assessment under section 6851, 6861, or 6862, as the case may be, is reasonable under the circumstances, and

"(ii) the amount so assessed or demanded as a result of the action taken under section 6851, 6861, or 6862 is appropriate under the circumstances, or

"(B) whether or not the levy described in subsection (a)(1) is reasonable under the circumstances.

If the court determines that proper service was not made on the United States or on the Secretary, as may be appropriate, within 5 days after the date of the commencement of the proceeding, then the running of the 20-day period set forth in the preceding sentence shall not begin before the day on which proper service was made on the United States or on the Secretary, as may be appropriate.

"(4) ORDER OF COURT.—If the court determines that the making of such levy is unreasonable, that the making of such assessment is unreasonable, or that the amount assessed or demanded is inappropriate, then the court may order the Secretary to release such levy, to abate such assessment, to redetermine (in whole or in part) the amount assessed or demanded, or to take such other action as the court finds appropriate."

(d) VENUE.—Section 7429(e) of the 1986 Code (relating to venue) is amended to read as follows:

"(e) VENUE.—

"(1) DISTRICT COURT.—A civil action in a district court under subsection (b) shall be commenced only in the judicial district described in section 1402(a) (1) or (2) of title 28, United States Code.

"(2) TRANSFER OF ACTIONS.—If a civil action is filed under subsection (b) with the Tax Court and such court finds that there is want of jurisdiction because of the jurisdiction provisions of subsection (b)(2), then the Tax Court shall, if such court determines it is in the interest of justice, transfer the civil action to the district court in which the action could have been brought at the time such action was filed. Any civil action so transferred shall proceed as if such action had been filed in the district court to which such action is transferred on the date on which such action was actually filed in the Tax Court from which such action is transferred."

(e) CONFORMING AMENDMENTS.—

(1) Section 7429(c) of the 1986 Code (relating to extension of 20-day period where taxpayer so requests) and section 7429(f) (relating to finality of determination) are amended by striking out "district" each place it appears.

(2) Section 7429(g) of the 1986 Code (relating to burden of proof) is amended—

(A) by inserting "the making of a levy described in subsection (a)(1) or" after "whether" in paragraph (1),

(B) by striking out "TERMINATION" in the heading of paragraph (1) and inserting in lieu thereof "LEVY, TERMINATION,", and

(C) by striking out "an action" and inserting in lieu thereof "a proceeding" in paragraphs (1) and (2).

(3) The heading of section 7429 of the 1986 Code is amended by inserting "levy or" after "jeopardy".

(4) The table of sections for subchapter B of chapter 76 of the 1986 Code is amended by inserting "levy or" after "jeopardy" in the item relating to section 7429.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to jeopardy levies issued and assessments made after the date of the enactment of this Act.

SEC. 776. ADMINISTRATIVE APPEAL OF LIENS.

(a) ESTABLISHMENT OF ADMINISTRATIVE APPEAL FOR DISPUTED LIENS.—Subchapter C of chapter 64 of the 1986 Code (relating to lien for taxes) is amended by redesignating section 6326 as section 6327 and inserting after section 6325 the following new section:

"SEC. 6326. ADMINISTRATIVE APPEAL OF LIENS.

"(a) IN GENERAL.—In such form and at such time as the Secretary shall prescribe by regulations, any person shall be allowed to appeal to the Secretary after the filing of a notice of a lien under this subchapter on the property or the rights to property of such person for a release of such lien alleging an error in the filing of the notice of such lien."

"(b) CERTIFICATE OF RELEASE.—If the Secretary determines that the filing of the notice of any lien was erroneous, the Secretary shall immediately issue a certificate of release of such lien and shall include in such certificate a statement that such filing was erroneous."

(b) REGULATIONS.—The Secretary of the Treasury or the Secretary's delegate shall prescribe the regulations necessary to implement the administrative appeal provided for in the amendment made by subsection (a) within 180 days after the date of the enactment of this Act.

(c) CLERICAL AMENDMENT.—The table of sections for subchapter C of chapter 64 of the 1986 Code is amended by striking out the item relating to section 6326 and inserting in lieu thereof the following:

"Sec. 6326. Administrative appeal of liens.

"Sec. 6327. Cross references."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subpart C—Proceedings by Taxpayers

SEC. 777. AWARDING OF COSTS AND CERTAIN FEES IN ADMINISTRATIVE AND COURT PROCEEDINGS.

(a) IN GENERAL.—Section 7430 of the 1986 Code is amended to read as follows:

"SEC. 7430. AWARDING OF COSTS AND CERTAIN FEES.

"(a) IN GENERAL.—In any administrative or court proceeding which is brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty under this title, the prevailing party may be awarded a judgment or a settlement for—

"(1) reasonable administrative costs incurred in connection with such administrative proceeding within the Internal Revenue Service, and

"(2) reasonable litigation costs incurred in connection with such court proceeding.

"(b) LIMITATIONS.—

"(1) REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED.—A judgment for reasonable litigation costs shall not be awarded under subsection (a) in any court proceeding unless the court determines that the prevailing party has exhausted the administrative remedies available to such party within the Internal Revenue Service.

"(2) ONLY COSTS ALLOCABLE TO THE UNITED STATES.—An award under subsection (a) shall be made only for reasonable litigation and administrative costs which are allocable to the United States and not to any other party.

"(3) EXCLUSION OF DECLARATORY JUDGMENT PROCEEDINGS.—

"(A) IN GENERAL.—No award for reasonable litigation costs may be made under subsection (a) with respect to any declaratory judgment proceeding.

"(B) EXCEPTION FOR SECTION 501(c)(3) DETERMINATION REVOCATION PROCEEDINGS.—Subparagraph (A) shall not apply to any proceeding which involves the revocation of a determination that the organization is described in section 501(c)(3).

"(4) COSTS DENIED WHERE PARTY PREVAILING PROTRACTS PROCEEDINGS.—No award for reasonable litigation and administrative costs

may be made under subsection (a) with respect to any portion of the administrative or court proceeding during which the prevailing party has unreasonably protracted such proceeding.

"(c) DEFINITIONS.—For purposes of this section—

"(1) REASONABLE LITIGATION COSTS.—The term 'reasonable litigation costs' includes—

"(A) reasonable court costs, and

"(B) based upon prevailing market rates for the kind or quality of services furnished—

"(i) the reasonable expenses of expert witnesses in connection with a court proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States,

"(ii) the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case, and

"(iii) reasonable fees paid or incurred for the services of attorneys in connection with the court proceeding, except that such fees shall not be in excess of $75 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for such proceeding, justifies a higher rate.

"(2) REASONABLE ADMINISTRATIVE COSTS.—The term 'reasonable administrative costs' means—

"(A) any administrative fees or similar charges imposed by the Internal Revenue Service, and

"(B) expenses, costs, and fees described in paragraph (1)(B), except that any determination made by the court under clause (ii) or (iii) thereof shall be made by the Internal Revenue Service in cases where the determination under paragraph (4)(B) of the awarding of reasonable administrative costs is made by the Internal Revenue Service.

Such term shall only include costs incurred on or after the earlier of (i) the date of the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals, or (ii) the date of the notice of deficiency.

"(3) ATTORNEY'S FEES.—For purposes of paragraphs (1) and (2), fees for the services of an individual (whether or not an attorney) who is authorized to practice before the Tax Court or before the Internal Revenue Service shall be treated as fees for the services of an attorney.

"(4) PREVAILING PARTY.—

"(A) IN GENERAL.—The term 'prevailing party' means any party in any proceeding to which subsection (a) applies (other than the United States or any creditor of the taxpayer involved)—

"(i) with respect to which the United States fails to establish that the position of the United States was substantially justified,

"(ii) which—

"(I) has substantially prevailed with respect to the amount in controversy, or

"(II) has substantially prevailed with respect to the most significant issue or set of issues presented, and

"(iii) which meets the requirements of the 1st sentence of section 2412(d)(1)(B) of title 28, United States Code (as in effect on October 22, 1986) and meets the requirements of section 2412(d)(2)(B) of such title 28 (as so in effect).

"(B) DETERMINATION AS TO PREVAILING PARTY.—Any determination under subparagraph (A) as to whether a party is a prevailing party shall be made by agreement of the parties or—

"(i) in the case where the final determination with respect to the tax, interest, or penalty is made at the administrative level, by the Internal Revenue Service, or

"(ii) in the case where such final determination is made by a court, the court.

"(5) ADMINISTRATIVE PROCEEDINGS.—The term 'administrative proceeding' means any procedure or other action before the Internal Revenue Service.

"(6) COURT PROCEEDINGS.—The term 'court proceeding' means any civil action brought in a court of the United States (including the Tax Court and the United States Claims Court).

"(7) POSITION OF UNITED STATES.—The term 'position of the United States' means the position taken by the United States in the proceeding to which subsection (a) applies as of the later of—

"(A) the date of the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals (or if earlier, the date of the notice of deficiency), or

"(B) the date by which the taxpayer has presented the relevant evidence within the control of the taxpayer and legal arguments with respect to such proceeding to examination or service center personnel of the Internal Revenue Service.

"(d) SPECIAL RULES FOR PAYMENT OF COSTS.—

"(1) REASONABLE ADMINISTRATIVE COSTS.—An award for reasonable administrative costs shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

"(2) REASONABLE LITIGATION COSTS.—An award for reasonable litigation costs shall be payable in the case of the Tax Court in the same manner as such an award by a district court.

"(e) MULTIPLE ACTIONS.—For purposes of this section, in the case of—

"(1) multiple actions which could have been joined or consolidated, or

"(2) a case or cases involving a return or returns of the same taxpayer (including joint returns of married individuals) which could have been joined in a single court proceeding in the same court,

such actions or cases shall be treated as 1 court proceeding regardless of whether such joinder or consolidation actually occurs, unless the court in which such action is brought determines, in its discretion, that it would be inappropriate to treat such actions or cases as joined or consolidated.

"(f) RIGHT OF APPEAL.—

"(1) COURT PROCEEDINGS.—An order granting or denying (in whole or in part) an award for reasonable litigation or administrative costs under subsection (a) in a court proceeding, shall be incorporated as a part of the decision or judgment in the court proceeding and shall be subject to appeal in the same manner as the decision or judgment.

"(2) ADMINISTRATIVE PROCEEDINGS.—A decision granting or denying (in whole or in part) an award for reasonable administrative costs under subsection (a) by the Internal Revenue Service shall be subject to appeal to the Tax Court under rules similar to the rules under section 7463 (without regard to the amount in dispute)."

(b) CONFORMING AMENDMENT.—Section 504 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) No award may be made under this section for costs, fees, or other expenses which may be awarded under section 7430 of the Internal Revenue Code of 1986."

(c) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 of the 1986 Code is amended by striking out "court" in the item relating to section 7430.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to proceedings commencing after the date of the enactment of this Act.

SEC. 778. CIVIL CAUSE OF ACTION FOR DAMAGES SUSTAINED DUE TO FAILURE TO RELEASE LIEN.

(a) IN GENERAL.—Subchapter B of chapter 76 of the 1986 Code (relating to proceedings by taxpayers and third parties) is amended by redesignating section 7432 as section 7433 and by inserting after section 7431 the following new section:

"SEC. 7432. CIVIL DAMAGES FOR FAILURE TO RELEASE LIEN.

"(a) IN GENERAL.—If any officer or employee of the Internal Revenue Service knowingly, or by reason of negligence, fails to release a lien under section 6325 on property of the taxpayer, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

"(b) DAMAGES.—In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of—

"(1) the greater of—

"(A) actual, direct economic damages sustained by the plaintiff which, but for the actions of the defendant, would not have been sustained, or

"(B) $100 per day for each day occurring after the date which is 10 days after the taxpayer has notified the Secretary in writing (in such form and manner as the Secretary may provide) of such failure after the end of the period described in section 6325, and

"(2) the costs of the action.

"(c) TAX COURT JURISDICTION.—The Tax Court shall have jurisdiction of any action brought under subsection (a) in the same manner as a claim for refund.

"(d) SETTLEMENT AND PAYMENT AUTHORITY.—The Secretary may settle any claims that could have been filed under this section. Such claims shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

"(e) LIMITATIONS.—

"(1) REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED.—A judgment for damages shall not be awarded under subsection (b) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.

"(2) MITIGATION OF DAMAGES.—The amount of damages awarded under subsection (b)(1)(A) shall be reduced by the amount of such damages which could have reasonably been mitigated by the plaintiff.

"(3) LIMITATION ON PER DIEM DAMAGES.—No award for damages described in subsection (b)(1)(B) shall exceed $1,000.

"(4) PERIOD FOR BRINGING ACTION.—Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought, without regard to the amount in controversy, at any time within 2 years after the date of discovery by the plaintiff of the failure to release a lien under section 6325 by the defendant."

SEC. 782. JURISDICTION TO REVIEW CERTAIN SALES OF SEIZED PROPERTY.

(a) JURISDICTION TO REVIEW CERTAIN SALES OF PROPERTY.—Section 6863(b)(3) of the 1986 Code (relating to stay of sale of seized property pending Tax Court decision) is amended by adding at the end thereof the following new subparagraph:

"(C) REVIEW BY TAX COURT.—If, but for the application of subparagraph (B), a sale would be prohibited by subparagraph (A)(iii), then the Tax Court shall have jurisdiction to review the Secretary's determination under subparagraph (B) that the property may be sold. Such review may be commenced upon motion by either the Secretary or the taxpayer. An order of the Tax Court disposing of a motion under this paragraph shall be reviewable in the same manner as a decision of the Tax Court."

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the 90th day after the date of the enactment of this Act.

SEC. 783. JURISDICTION TO REDETERMINE INTEREST ON DEFICIENCIES.

(a) IN GENERAL.—Section 7481 of the 1986 Code (relating to date when Tax Court decision becomes final) is amended by adding at the end thereof the following new subsection:

"(c) JURISDICTION OVER INTEREST DETERMINATIONS.—Notwithstanding subsection (a), if—

"(1) an assessment has been made by the Secretary under section 6215 which includes interest as imposed by this title,

"(2) the taxpayer has paid the entire amount of the deficiency plus interest claimed by the Secretary, and

"(3) within 1 year after the date the decision of the Tax Court becomes final under subsection (a), the taxpayer files a petition in the Tax Court for a determination that the amount of interest claimed by the Secretary exceeds the amount of interest imposed by this title,

then the Tax Court may reopen the case solely to determine whether the taxpayer has made an overpayment of such interest and the amount of any such overpayment. If the Tax Court determines under this subsection that the taxpayer has made an overpayment of interest, then that determination shall be treated under section 6512(b)(1) as a determination of an overpayment of tax. An order of the Tax Court redetermining the interest due, when entered upon the records of the court, shall be reviewable in the same manner as a decision of the Tax Court."

(b) CONFORMING AMENDMENTS.—

(1) Section 6512(a) of the 1986 Code (relating to effect of petition to Tax Court) is amended by inserting after "section 6213(a)" the following: "(or 7481(c) with respect to a determination of statutory interest)".

(2) Subsection (a) of section 7481 of the 1986 Code is amended by striking out "subsection (b)" and inserting in lieu thereof "subsections (b) and (c)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to assessments of deficiencies redetermined by the Tax Court made after the date of the enactment of this Act.

SEC. 784. JURISDICTION TO MODIFY DECISIONS IN CERTAIN ESTATE TAX CASES.

(a) IN GENERAL.—Section 7481 of the 1986 Code (relating to date when Tax Court decision becomes final), as amended by section 783(a), is further amended by adding at the end thereof the following new subsection:

"(d) DECISIONS RELATING TO ESTATE TAX EXTENDED UNDER SECTION 6166.—If with respect to a decedent's estate subject to a decision of the Tax Court—

"(1) the time for payment of an amount of tax imposed by chapter 11 is extended under section 6166, and

"(2) there is treated as an administrative expense under section 2053 either—

"(A) any amount of interest which a decedent's estate pays on any portion of the tax imposed by section 2001 on such estate for which the time of payment is extended under section 6166, or

"(B) interest on any estate, succession, legacy, or inheritance tax imposed by a State on such estate during the period of the extension of time for payment under section 6166,

then, upon a motion by the petitioner in such case in which such time for payment of tax has been extended under section 6166, the Tax Court may reopen the case solely to modify the Court's decision to reflect such estate's entitlement to a deduction for such administration expenses under section 2053 and may hold further trial solely with respect to the claim for such deduction if, within the discretion of the Tax Court, such a hearing is deemed necessary. An order of the Tax Court disposing of a motion under this subsection shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order."

(b) CONFORMING AMENDMENTS.—

(1) Section 6512(a) of the 1986 Code (relating to effect of petition to Tax Court), as amended by section , is further amended by striking out "interest)" and inserting in lieu thereof "interest or section 7481(d) solely with respect to a determination of estate tax by the Tax Court)".

(2) Subsection (a) of section 7481 of the 1986 Code, as amended by section 783(b)(2), is further amended by striking out "subsections (b) and (c)" and inserting in lieu thereof "subsections (b), (c), and (d)".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to Tax Court cases for which the decision is not final on the date of the enactment of this Act.

SEC. 785. REFUND JURISDICTION FOR THE UNITED STATES TAX COURT.

(a) IN GENERAL.—Section 7442 of the 1986 Code (relating to jurisdiction of the Tax Court) is amended to read as follows:

"SEC. 7442. JURISDICTION.

"(a) GENERAL RULE.—The Tax Court and its divisions shall have such jurisdiction as is conferred on them by this title, by chapters 1, 2, 3, and 4 of the Internal Revenue Code of 1939, by title II and title III of the Revenue Act of 1926 (44 Stat. 10–87), or by laws enacted subsequent to February 26, 1926.

"(b) REFUND JURISDICTION.—Subject to the provisions of subsection (c), the Tax Court and its divisions shall have original jurisdiction of any civil action against the Secretary for the recovery of any tax, addition to the tax, additional amount, or penalty (including interest thereon) which would be subject to the deficiency procedures of subchapter B of chapter 63 if the Secretary determined a deficiency therein. The jurisdiction shall include any counterclaim, set-off, or equitable recoupment against (or for) the taxpayer.

"(c) LIMITATIONS.—No civil action shall be commenced by a taxpayer in the Tax Court under subsection (b) unless—

"(1) there is then pending and awaiting submission in the Tax Court an action commenced by the taxpayer to contest a deficiency determined by the Secretary for a taxable period or type of tax different from the taxable period or type of tax which would be the subject of a civil action under subsection (b), and

"(2)(A) one or more issues in the civil action under subsection (b) is related by subject matter to one or more issues in the pending case, or

"(B) the result in the civil action under subsection (b) would affect the amount in controversy in the pending case, or the result in the pending case would affect the amount in controversy in a civil action under subsection (b).

"(d) STAY OF PROCEEDINGS WHERE NO PRIOR AUDIT.—If—

(1) a civil action is filed in the Tax Court under subsection (b), and

(2) the Secretary shows to the satisfaction of a judge of the Tax Court or a special trial judge of the Court that the Secretary has not examined books and witnesses under section 7602 for the taxable period or periods or type of tax involved in the civil action filed under subsection (b),

all proceedings in the Tax Court in both the pending case and the civil action under subsection (b) shall be stayed for a period of 180 days. The stay of proceedings under this subsection may be extended for an additional period or periods under extraordinary circumstances for good cause shown. During any stay of proceedings in a civil action under subsection (b), the provisions of chapter 78 (relating to discovery of liability and enforcement of title) shall be applied with regard to the tax liabilities in dispute in such civil action as though the civil action had not been brought in the Tax Court.

"(e) TRANSFER OF ACTIONS.—If a civil action is filed under subsection (b) with the Tax Court and such Court finds that there is want of jurisdiction because of the provisions of subsection (c), then the Tax Court shall, if such Court determines it is in the interest of justice, transfer the civil action to the district court in which the action could have been brought at the time such action was filed or to the United States Claims Court, at the election of the taxpayer. Any civil action so transferred shall proceed as if such action had been filed in the court to which such action is transferred on the date on which such action was actually filed in the Tax Court from which such action is transferred."

(b) CONFORMING AMENDMENTS.—

(1) AMENDMENT OF SECTION 6212.—Paragraph (1) of section 6212(c) of the 1986 Code (relating to further deficiency letters restricted) is amended by inserting "or if the taxpayer has commenced a proceeding under section 7442(b)," after "section 6213(a),".

(2) AMENDMENT OF SECTION 6214.—Subsection (a) of section 6214 of the 1986 Code (relating to determinations by Tax Court) is amended to read as follows:

"(a) JURISDICTION AS TO INCREASE OF DEFICIENCY, ADDITIONAL AMOUNTS, OR ADDITIONS TO THE TAX.—

"(1) JURISDICTION TO DETERMINE.—Except as provided by paragraph (2) and by section 7463, the Tax Court shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the taxpayer, and to determine whether any additional amount, or any addition to the

tax should be assessed, if claim therefor is asserted by the Secretary at or before the hearing or a rehearing.

"(2) LIMIT ON DETERMINATION.—In the case of any proceeding under section 7442(b), no deficiency shall be determined unless the Tax Court determines as part of the Court's decision that such deficiency was asserted by the Secretary in an appropriate pleading filed with the Tax Court within the period of limitations provided in section 6501."

(3) AMENDMENT OF SECTION 6228.—Paragraphs (1)(B) and (2)(A)(i) of section 6228(b) of the 1986 Code (relating to certain requests for administrative adjustment) are each amended by inserting "or 7442(b)" after "section 7422".

(4) AMENDMENT OF SECTION 6512.—Paragraph (1) of section 6512(b) of the 1986 Code (relating to overpayment determined by Tax Court) is amended by inserting "if the Secretary has mailed to the taxpayer a notice of deficiency under section 6212(a) (relating to deficiencies of income, estate, gift, and certain excise taxes), if the taxpayer files a petition with the Tax Court within the time prescribed by section 6213(a), and" after "section 7463,".

(5) AMENDMENTS OF SECTION 7422.—

(A) The first sentence of paragraph (1) of section 7422(f) of the 1986 Code (relating to limitation on right of action for refund) is amended by striking out "A suit" and inserting in lieu thereof "Except as provided in section 7442(b), a suit"

(B) Section 7422 of the 1986 Code (relating to civil actions for refund) is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) SPECIAL RULE IN CASE OF NOTICE OF DEFICIENCY.—If the Secretary has sent a notice of deficiency with respect to income tax for a taxable year, gift tax for a calendar year or calendar quarter, estate tax in respect to the taxable estate of a decedent, tax imposed by chapters 41, 42, 43, or 44 with respect to an act (or failure to act), or tax imposed by chapter 45 for a taxable period, no proceeding under section 7442(b) may be commenced in the Tax Court with respect to any such tax for so long as the taxpayer is permitted to file a petition with the Tax Court for a redetermination of such deficiency."

(6) AMENDMENTS OF SECTION 7423.—

(A) Section 7423 of the 1986 Code (relating to repayments to officers or employees) is amended to read as follows:

"SEC. 7423. RECOVERIES AGAINST OFFICERS OR EMPLOYEES.

"(a) REPAYMENTS TO OFFICERS OR EMPLOYEES.—The Secretary, subject to regulations prescribed by the Secretary, is authorized to repay—

"(1) COLLECTIONS RECOVERED.—To any officer or employee of the United States the full amount of such sums of money as may be recovered against such officer or employee in any court, for any internal revenue taxes collected by such officer or employee, with the cost and expense of suit.

"(2) DAMAGES AND COSTS.—All damages and costs recovered against any officer or employee of the United States in any suit brought against such officer or employee by reason of anything done in the due performance of such officer's or employee's official duty under this title.

"(b) NO EXECUTION AGAINST SECRETARY.—Execution shall not issue against the Secretary for a refund on a final decision of the Tax Court in a proceeding under section 7442(b), but any amount payable as a result of such decision shall be payable in the same manner as such an award by a district court."

(B) The table of sections for subchapter B of chapter 76 of the 1986 Code is amended by striking out the item relating to section 7423 and inserting in lieu thereof the following new item:

"Sec. 7423. Recoveries against officers or employees."

(7) AMENDMENTS OF SECTION 7451.—

(A) Section 7451 of the 1986 Code (relating to fee for filing petition) is amended by striking out "petition" and inserting in lieu thereof "initial pleading", and by inserting "or for the recovery of any amount under section 7442(b)" after "section 6228(a)".

(B) The heading of section 7451 of the 1986 Code is amended by striking out "petition" and inserting in lieu thereof "initial pleading".

(C) The table of sections for part II of subchapter C of chapter 76 of the 1986 Code is amended by striking out "petition" in the item relating to section 7451 and inserting in lieu thereof "initial pleading".

(8) AMENDMENT OF SECTION 7459.—The first sentence of subsection (c) of section 7459 of the 1986 Code (relating to reports and decisions) is amended by inserting "or overpayment" after "amount of the deficiency".

(9) AMENDMENT OF SECTION 7463.—The first sentence of subsection (a) of section 7463 of the 1986 Code (relating to disputes involving $10,000 or less) is amended by striking out "petition" and inserting in lieu thereof "pleading", and by inserting "or for a refund," after "of a deficiency".

(10) AMENDMENTS OF SECTION 7482.—

(A) Subparagraph (A) of section 7482(b)(1) of the 1986 Code (relating to venue) is amended by inserting "or a refund" after "tax liability".

(B) Subparagraph (B) of section 7482(b)(1) of the 1986 Code is amended by inserting "or a refund" after "tax liability", and by inserting "or refund" after "the liability".

(C) The last sentence of section 7482(b)(1) of the 1986 Code is amended by striking out "petition" the first time it appears and inserting in lieu thereof "initial pleading", and by inserting "or a refund" after "tax liability".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to proceedings commenced in the United States Tax Court on or after the date which is 6 months after the date of the enactment of this Act.

PART II—EXTENSION OF EXPIRING TAX PROVISIONS

SEC. 786. CARRYOVER OF POST-1987 LOW-INCOME HOUSING CREDIT DOLLAR AMOUNTS PERMITTED.

(a) IN GENERAL.—Section 42(h)(6) of the 1986 Code (relating to housing credit dollar amount may not be carried over, etc.), as amended by section 102(l)(14)(A), is amended by adding at the end thereof the following new subparagraph:

"(E) EXCEPTION WHERE 10 PERCENT OF COST INCURRED IN 1ST YEAR.—

"(i) IN GENERAL.—An allocation meets the requirements of this subparagraph if such allocation is made with respect to a qualified building which is placed in service not later than the close of the second calendar year following the calendar year in which ends the taxable year to which the allocation will 1st apply.

"(ii) QUALIFIED BUILDING.—For purposes of clause (i), the term 'qualified building' means a building—

"(I) more than 10 percent of the reasonably anticipated cost of which is incurred before the close of the calendar year in which ends the taxable year to which the allocation will 1st apply, and

"(II) which is a new building (or is treated under subsection (e) as a new building) when placed in service."

(b) CONFORMING AMENDMENT.—Section 42(h)(6)(B) of the 1986 Code, as amended by section 102(l)(14)(A), is amended by striking out "(C) or (D)" and inserting in lieu thereof "(C), (D), or (E)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts allocated in calendar years after 1987.

SEC. 787. EXTENSION OF AUTHORITY TO ISSUE MORTGAGE REVENUE BONDS AND MORTGAGE CREDIT CERTIFICATES.

(a) BONDS.—

(1) IN GENERAL.—Subparagraph (B) of section 143(a)(1) of the 1986 Code (relating to termination) is amended by striking out "December 31, 1988" each place it appears and inserting in lieu thereof "June 30, 1989".

(2) SPECIAL RULE.—The date contained in section 143(a)(1)(B) of the 1986 Code shall be treated as contained in section 103A(c)(1)(B) of the Internal Revenue Code of 1954, as in effect on the day before the date of the enactment of the Reform Act, for purposes of any bond issued to refund a bond to which such section 103A(c)(1) applies.

(b) CERTIFICATES.—Subsection (h) of section 25 of the 1986 Code (relating to credit for interest on certain home mortgages), as amended by section 113(a)(26) of this Act, is amended by striking out "for any calendar year after 1988" and inserting in lieu thereof "after June 30, 1989".

SEC. 788. EXTENSION AND MODIFICATION OF EXCLUSION FOR EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE.

(a) EXTENSION.—Subsection (d) of section 127 of the 1986 Code (relating to educational assistance programs) is amended by striking out "December 31, 1987" and inserting in lieu thereof "December 31, 1988".

(b) RESTRICTIONS RELATING TO EDUCATION AT THE GRADUATE LEVEL.—

(1) IN GENERAL.—Paragraph (1) of section 127(c) of the 1986 Code is amended by adding at the end thereof the following new sentence: "The term 'educational assistance' also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree."

(2) EXCEPTION FOR TEACHING AND RESEARCH ASSISTANTS.—

(A) Paragraph (8) of section 127(c) of the 1986 Code is amended to read as follows:

"(8) SPECIAL RULES FOR TEACHING AND RESEARCH ASSISTANTS.—In the case of the education of an individual who is a graduate student at an educational organization described in section 170(b)(1)(A)(ii) and who is engaged in teaching or research activities for such organization, the last sentence of paragraph (1) of this subsection shall not apply."

(B) Subsection (d) of section 117 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) SPECIAL RULES FOR TEACHING AND RESEARCH ASSISTANTS.—In the case of the edu-

cation of an individual who is a graduate student at an educational organization described in section 170(b)(1)(A)(ii) and who is engaged in teaching or research activities for such organization, paragraph (2) shall be applied as if it did not contain the phrase '(below the graduate level)'. The preceding sentence shall not apply to taxable years beginning after December 31, 1988."

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1987.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to taxable years beginning after December 31, 1988.

SEC. 789. EXTENSION AND MODIFICATION OF EXCLUSION OF AMOUNTS RECEIVED UNDER GROUP LEGAL SERVICES PLANS.

(a) EXTENSION.—Section 120(e) of the 1986 Code is amended by striking out striking out "1987" and inserting in lieu thereof "1988".

(b) LIMITATION ON VALUE OF INSURANCE PROTECTION WHICH MAY BE EXCLUDED.—

(1) IN GENERAL.—Section 120(a) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"No exclusion shall be allowed under this section with respect to an individual for any taxable year to the extent that the value of insurance (whether through an insurer or self-insurance) against legal costs incurred by the individual (or his spouse or dependents) provided under a qualified group legal services plan exceeds $70."

(2) CONFORMING AMENDMENT.—Subparagraph (A) of section 125(e)(2) of the 1986 Code is amended by inserting "or any insurance under a qualified group legal services plan the value of which is so includable only because it exceeds the limitation of section 120(a)" after "section 79".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 1987.

SEC. 790. EXTENSION OF SPECIAL STUDENT LOAN POOL ARBITRAGE RULES.

Subsection (c)(2)(B) of section 148 of the 1986 Code (relating to arbitrage) is amended by striking out "December 31, 1988" and inserting in lieu thereof "June 30, 1989".

SEC. 791. EXTENSION OF CERTAIN BUSINESS ENERGY CREDITS.

Each of the following provisions in the table under section 46(b)(2)(A) of the 1986 Code are amended by striking out "December 31, 1988" and inserting in lieu thereof "June 30, 1989":

(1) The item relating to the 10 percent credit in clause (viii).

(2) The item relating to the 10 percent credit in clause (ix).

(3) Clause (x).

SEC. 792. EXTENSION AND MODIFICATION OF TARGETED JOBS CREDIT.

(a) 6-MONTH EXTENSION.—Paragraph (4) of section 51(c) of the 1986 Code (relating to termination) is amended by striking out "December 31, 1988" and inserting in lieu thereof "June 30, 1989".

(b) EXTENSION OF AUTHORIZATION.—Paragraph (2) of section 261(f) of the Economic Recovery Tax Act of 1981 is amended by striking out "and 1988" and inserting in lieu thereof "1988 and 1989".

(c) REDUCTION IN PERCENTAGE OF CREDIT FOR SUMMER YOUTH EMPLOYEES.—

(1) IN GENERAL.—Subparagraph (B) of section 51(d)(12) of the 1986 Code is amended by striking out clause (i) and by redesignating clauses (ii) and (iii) as clauses (i) and (ii).

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to individuals who begin work for the employer after December 31, 1988.

SEC. 793. EXTENSION OF RESEARCH CREDIT.

Subsection (h) of section 41 of the 1986 Code (relating to credit for increasing research activities) is amended—

(1) by striking out "December 31, 1988" each place it appears and inserting in lieu thereof "March 31, 1989",

(2) by striking out "January 1, 1989" each place it appears and inserting in lieu thereof "April 1, 1989", and

(3) by adding at the end thereof the following new paragraph:

"(3) COMPUTATION OF RESEARCH EXPENDITURES.—

"(A) IN GENERAL.—Notwithstanding paragraph (1), in the case of a taxable year which begins before April 1, 1989, and ends after December 31, 1988, the amount of the qualified research expenditures and basic research payments taken into account under subsection (a) for such taxable year shall be the applicable percentage of the amount of such expenditures and payments made during calendar year 1989.

"(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the term 'applicable percentage' means the percentage determined by dividing the number of months in the taxable year which occur during the period beginning January 1, 1989, and ending March 31, 1989, by 12."

SEC. 794. EXTENSION AND MODIFICATIONS OF PROVISIONS RELATING TO FINANCIAL INSTITUTIONS.

(a) 6-MONTH EXTENSION.—

(1) REORGANIZATIONS.—Paragraph (1) of section 902(c) of the Reform Act is amended by striking out "December 31, 1988" and inserting in lieu thereof "June 30, 1989".

(2) FSLIC FINANCIAL ASSISTANCE.—Paragraph (2)(A) of section 902(c) of the Reform Act is amended by striking out "December 31, 1988" and inserting in lieu thereof "June 30, 1989".

(3) NET OPERATING LOSS RULES.—The last sentence of section 382(l)(5)(F) of the 1986 Code is amended by striking out "December 31, 1988" and inserting in lieu thereof "June 30, 1989".

(b) APPLICATION OF CERTAIN PROVISIONS TO BANKS.—

(1) SPECIAL RULES FOR REORGANIZATIONS AND NET OPERATING LOSSES.—

(A) Section 368(a)(3)(D) of the 1986 Code (as in effect before the amendment made by section 904(a) of the Reform Act) is amended by adding at the end thereof the following new clause:

"(iv) In the case of a financial institution to which section 585 applies—

"(I) the term 'title 11 or similar case' means only a case in which the applicable authority (which shall be treated as the court in such case) makes the certification described in subclause (II), and

"(II) clause (ii) shall apply to such institution, except that for purposes of clause (ii)(III), the applicable authority must certify that the grounds set forth in such clause (modified in such manner as the Secretary determines necessary because such institution is not an institution to which section 593 applies) exist with respect to such transferor or will exist in the near future in the absence of action by the applicable authority.

For purposes of this clause, the term 'applicable authority' means the Comptroller of the Currency or the Federal Deposit Insurance Corporation, or if neither has the supervisory authority with respect to the transfer, the equivalent State authority."

(B) Subclause (I) of section 382(l)(5)(F)(iii) of the 1986 Code is amended by inserting "(as modified by section 368(a)(D)(iv))" after "section 368(a)(D)(ii)".

(C)(i) The amendment made by subparagraph (A) shall apply to acquisitions after December 31, 1988, and before July 1, 1989.

(ii) The amendment made by subparagraph (B) shall apply to any ownership change occurring after December 31, 1988, and before July 1, 1989.

(2) ASSISTANCE PAYMENTS.—

(A) Section 597(a) of the 1986 Code (as in effect before the amendments made by section 904(b) of the Reform Act) is amended by adding at the end thereof the following new sentence: "Gross income of a bank does not include any amount of money or other property received from the Federal Deposit Insurance Corporation pursuant to section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1821(f)), regardless of whether any note or other instrument is issued in exchange therefor."

(B) Section 597(b) of the 1986 Code (as so in effect) is amended by inserting "or bank" after "association".

(C)(i) The heading for section 597 of the 1986 Code (as so in effect) is amended by inserting "or FDIC" after "FSLIC".

(ii) The item relating to section 597 in part II of subchapter H of chapter 1 of the 1986 Code (as so in effect) is amended by inserting "or FDIC" after "FSLIC".

(D) The amendments made by this paragraph shall apply to transfers after December 31, 1988, and before July 1, 1989, except that such amendments shall also apply to transfers after June 30, 1989, pursuant to acquisitions after December 31, 1988, and before July 1, 1989.

(c) CERTAIN TAX ATTRIBUTES REDUCED BY 50 PERCENT OF FINANCIAL ASSISTANCE OF FSLIC AND FDIC.—

(1) IN GENERAL.—Section 597 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(c) REDUCTION OF TAX ATTRIBUTES BY 50 PERCENT OF AMOUNTS EXCLUDABLE UNDER SUBSECTION (a).—

"(1) IN GENERAL.—50 percent of any amount excludable under subsection (a) for any taxable year shall be applied to reduce the tax attributes of the taxpayer as provided in paragraph (2).

"(2) TAX ATTRIBUTES REDUCED; ORDER OF REDUCTION.—The reduction referred to in paragraph (1) shall be made in the following tax attributes in the following order:

"(A) NOL.—Any pre-assistance net operating loss for the taxable year.

"(B) INTEREST.—The amount of any interest with respect to which a deduction is allowable for the taxable year.

"(C) BUILT-IN PORTFOLIO LOSSES.—Recognized built-in portfolio losses for the taxable year.

"(3) PRE-ASSISTANCE NET OPERATING LOSS.—For purposes of paragraph (2)(A)—

"(A) IN GENERAL.—The pre-assistance net operating loss shall be determined in the same manner as a pre-change loss under section 382(d), except that—

"(i) the applicable financial institution shall be treated as the old loss corporation, and

"(ii) the determination date shall be substituted for the change date.

"(B) ORDERING RULE.—The reduction under paragraph (2)(A) shall be made in the carryovers in the order in which carryovers

are taken into account under this chapter for the taxable year.

"(4) RECOGNIZED BUILT-IN PORTFOLIO LOSSES.—For purposes of paragraph (2)(C), recognized built-in portfolio losses shall be determined in the same manner as recognized built-in losses under section 382(h), except that—

"(A) the only assets taken into account shall be the loan portfolio of the applicable financial institution,

"(B) the rules of clauses (i) and (ii) of paragraph (3)(A) shall apply, and

"(C) there shall be no limit on the number of years in the recognition period.

"(5) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) APPLICABLE FINANCIAL INSTITUTIONS.—The term 'applicable financial institutions' means the domestic building and loan association or bank the financial condition of which was determined by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation to require the financial assistance described in subsection (a).

"(B) DETERMINATION DATE.—The term 'determination date' means the date of the determination under subparagraph (A). Except as provided by the Secretary, any subsequent revision or modification of such determination shall be treated as made on the original determination date.

"(C) TAXABLE ASSET ACQUISITIONS.—In the case of any acquisition of the assets of any applicable financial institution to which section 381 does not apply, paragraph (1) shall not apply to any amount excludable under subsection (a) which are payments made at the time of the acquisition to the person acquiring such assets to make up the difference between the value of such assets and the liabilities assumed.

"(D) CARRYOVERS.—If 50 percent of the amount excludable under subsection (a) for any taxable year exceeds the amount of the tax attributes described in paragraph (2) for such taxable year, then, for purposes of this subsection, the amount excludable under subsection (a) for the succeeding taxable year shall be increased by an amount equal to twice the amount of such excess.

"(E) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subsection."

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to transfers after December 31, 1988, and before July 1, 1989 (except that such amendments shall also apply to transfers pursuant to acquisitions or determinations made during such period).

PART III—OTHER SUBSTANTIVE PROVISIONS

SEC. 795. AMENDMENTS TO UNIFORM CAPITALIZATION RULES.

(a) TREATMENT OF CERTAIN PRODUCERS OF CREATIVE PROPERTY.—Section 263A of the 1986 Code is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) EXEMPTION FOR FREE LANCE AUTHORS, PHOTOGRAPHERS, AND ARTISTS.—

"(1) IN GENERAL.—Nothing in this section shall require the capitalization of any qualified creative expense.

"(2) QUALIFIED CREATIVE EXPENSE.—For purposes of this subsection, the term 'qualified creative expense' means any expense—

"(A) which is paid or incurred by an individual in the trade or business of such individual (other than as an employee) of being a writer, photographer, or artist, and

"(B) which, without regard to this section, would be allowable as a deduction for the taxable year.

Such term does not include any expense related to printing, photographic plates, motion picture films, video tapes, or similar items.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) WRITER.—The term 'writer' means any individual if the personal efforts of such individual create (or may reasonably be expected to create) a literary manuscript, musical composition (including any accompanying words), or dance score.

"(B) PHOTOGRAPHER.—The term 'photographer' means any individual if the personal efforts of such individual create (or may reasonably be expected to create) a photograph or photographic negative or transparency.

"(C) ARTIST.—

"(i) IN GENERAL.—The term 'artist' means any individual if the personal efforts of such individual create (or may reasonably be expected to create) a picture, painting, sculpture, statue, etching, drawing, cartoon, graphic design, or original print edition.

"(ii) CRITERIA.—In determining whether any expense is paid or incurred in the trade or business of being an artist, the following criteria shall be taken into account:

"(I) The originality and uniqueness of the item created (or to be created).

"(II) The predominance of aesthetic value over utilitarian value of the item created (or to be created).

"(D) TREATMENT OF CERTAIN PERSONAL SERVICE CORPORATIONS.—

"(i) IN GENERAL.—In the case of a personal service corporation, this subsection shall apply to any expense of such corporation which directly relates to the activities of the qualified employee-owner in the same manner as if such expense were incurred by such employee-owner.

"(ii) QUALIFIED EMPLOYEE-OWNER.—The term 'qualified employee-owner' means any individual who is an employee-owner of the personal service corporation and who is a writer, photographer, or artist, but only if substantially all of the stock of such corporation is owned by such individual and members of his family (as defined in section 267(c)(4)).

"(iii) PERSONAL SERVICE CORPORATION.—For purposes of this subparagraph, the term 'personal service corporation' means any personal service corporation (as defined in section 269A(b))."

(b) TREATMENT OF ANIMALS PRODUCED IN FARMING BUSINESS.—

(1) IN GENERAL.—Subparagraph (A) of section 263A(d)(1) of the 1986 Code (relating to exception for farming businesses) is amended to read as follows:

"(A) IN GENERAL.—This section shall not apply to any of the following which is produced by the taxpayer in a farming business:

"(i) Any animal.

"(ii) Any plant which has a preproductive period of 2 years or less."

(2) CONFORMING AMENDMENTS.—

(A) The heading of paragraph (1) of section 263A(d) of the 1986 Code is amended to read as follows:

"(1) SECTION NOT TO APPLY TO CERTAIN PROPERTY.—".

(B) Subsections (d)(3) and (e) of section 263A of the 1986 Code are each amended by striking out "or animal" each place it appears.

(c) TREATMENT OF SINGLE PURPOSE AGRICULTURAL OR HORTICULTURAL STRUCTURES.—

(1) IN GENERAL.—Paragraph (3) of section 168(e) of the 1986 Code (relating to classification of property) is amended by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively, and by inserting after subparagraph (C) the following new subparagraphs:

"(D) 10.5-YEAR PROPERTY.—The term '10.5-year property' means any single purpose agricultural or horticultural structure (within the meaning of section 48(p))."

(2) TECHNICAL AMENDMENTS.—

(A) The table contained in paragraph (1) of section 168(c) of the 1986 Code (as amended by title I) is amended by striking out the item relating to 10-year property and inserting in lieu thereof the following new items:

10-year property.....	10 years
10.5-year property.....	10.5 years".

(B) Subparagraph (C) of section 168(e)(3) of the 1986 Code is amended by adding "and" at the end of clause (i), by striking out clause (ii), and by redesignating clause (iii) as clause (ii).

(C) The table contained in subparagraph (B) of section 168(g)(3) of the 1986 Code is amended by striking out all that follows the item relating to subparagraph (C)(i) and inserting in lieu thereof the following new items:

"(D)	10.5
(E)(i).....	24
(E)(ii).....	24
(F).....	50."

(D) The table contained in subparagraph (A) of section 467(e)(3) of the 1986 Code is amended by striking out the item relating to 10-year property and inserting in lieu thereof the following new items:

10-year property.....	10 years
10.5-year property.....	10.5 years".

(3) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall apply to property placed in service after December 31, 1988.

(B) EXCEPTION.—The amendments made by this subsection shall not apply to any property if such property is placed in service before January 1, 1990, and if such property—

(i) is constructed, reconstructed, or acquired by the taxpayer pursuant to a written contract which was binding on July 14, 1988, or

(ii) is constructed or reconstructed by the taxpayer and such construction or reconstruction began by July 14, 1988.

(d) TREATMENT OF PROPERTY USED IN A FARMING BUSINESS.—

(1) IN GENERAL.—Paragraph (2) of section 168(b) of the 1986 Code (as amended by title I) is amended by striking out "or" at the end of subparagraph (A), by redesignating subparagraph (B) as subparagraph (C), and by inserting after subparagraph (A) the following new subparagraph:

"(B) any property used in a farming business (within the meaning of section 263A(e)(4)), or".

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this section shall apply to property placed in service after December 31, 1988.

(B) EXCEPTION.—The amendments made by this section shall not apply to any property if such property is placed in service before July 1, 1989, and if such property—

(i) is constructed, reconstructed, or acquired by the taxpayer pursuant to a written contract which was binding on July 14, 1988, or

(ii) is constructed or reconstructed by the taxpayer and such construction or reconstruction began by July 14, 1988.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in subsections (c) or (d) or this paragraph, the amendments made by this section shall take effect as if included in the amendments made by section 803 of the Tax Reform Act of 1986.

(2) SUBSECTION (b).—

(A) IN GENERAL.—The amendments made by subsection (b) shall apply to costs incurred after December 31, 1988, in taxable years ending after such date.

(B) REVOCATION OF ELECTION.—If the taxpayer made an election under section 263A(d)(3) of the 1986 Code for a taxable year beginning before January 1, 1989, such taxpayer may, without the consent of the Secretary of the Treasury or his delegate, revoke such election effective for the taxpayer's 1st taxable year beginning after December 31, 1988.

SEC. 796. ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES.

(a) GENERAL RULE.—For purposes of sections 861(b), 862(b), and 863(b) of the 1986 Code, qualified research and experimental expenditures shall be allocated and apportioned as follows:

(1) Any qualified research and experimental expenditures expended solely to meet legal requirements imposed by a political entity with respect to the improvement or marketing of specific products or processes for purposes not reasonably expected to generate gross income (beyond de minimis amounts) outside the jurisdiction of the political entity shall be allocated only to gross income from sources within such jurisdiction.

(2) In the case of any qualified research and experimental expenditures (not allocated under paragraph (1)) to the extent—

(A) that such expenditures are attributable to activities conducted in the United States, 64 percent of such expenditures shall be allocated and apportioned to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States, and

(B) that such expenditures are attributable to activities conducted outside the United States, 64 percent of such expenditures shall be allocated and apportioned to income from sources outside the United States and deducted from such income in determining the amount of taxable income from sources outside the United States.

(3) The remaining portion of qualified research and experimental expenditures (not allocated under paragraphs (1) and (2)) shall be apportioned, at the annual election of the taxpayer, on the basis of gross sales or gross income, except that, if the taxpayer elects to apportion on the basis of gross income, the amount apportioned to income from sources outside the United States shall be at least 30 percent of the amount which would be so apportioned on the basis of gross sales.

(b) QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES.—For purposes of this section, the term "qualified research and experimental expenditures" means amounts which are research and experimental expenditures within the meaning of section 174 of the 1986 Code. For purposes of this subsection, rules similar to the rules of subsection (c) of section 174 of the 1986 Code shall apply.

(c) SPECIAL RULES FOR EXPENDITURES ATTRIBUTABLE TO ACTIVITIES CONDUCTED IN SPACE, ETC.—

(1) IN GENERAL.—Any qualified research and experimental expenditures described in paragraph (2)—

(A) if incurred by a United States person, shall be allocated and apportioned under this section in the same manner as if they were attributable to activities conducted in the United States, and

(B) if incurred by a person other than a United States person, shall be allocated and apportioned under this section in the same manner as if they were attributable to activities conducted outside the United States.

(2) DESCRIPTION OF EXPENDITURES.—For purposes of paragraph (1), qualified research and experimental expenditures are described in this paragraph if such expenditures are attributable to activities conducted—

(A) in space,

(B) on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States, or

(C) in Antarctica.

(d) AFFILIATED GROUP.—

(1) Except as provided in paragraph (2), the allocation and apportionment required by subsection (a) shall be determined as if all members of the affiliated group (as defined in subsection (e)(5) of section 864 of the 1986 Code) were a single corporation.

(2) For purposes of the allocation and apportionment required by subsection (a)—

(A) sales and gross income from products produced in whole or in part in a possession by an electing corporation (within the meaning of section 936(h)(5)(E) of the 1986 Code); and

(B) dividends from an electing corporation,

shall not be taken into account, except that this paragraph shall not apply to sales of (and gross income and dividends attributable to sales of) products with respect to which an election under section 936(h)(5)(F) of the 1986 Code is not in effect.

(3) The qualified research and experimental expenditures taken into account for purposes of subsection (a) shall be adjusted to reflect the amount of such expenditures included in computing the cost-sharing amount (determined under section 936(h)(5)(C)(i)(I) of the 1986 Code).

(4) The Secretary of the Treasury or his delegate may prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations providing for the source of gross income and the allocation and apportionment of deductions to take into account the adjustments required by paragraph (3).

(5) Paragraph (6) of section 864(e) of the 1986 Code shall not apply to qualified research and experimental expenditures.

(e) YEARS TO WHICH SECTION APPLIES.—

(1) IN GENERAL.—Except as provided in this subsection, this section shall apply to the taxpayer's 1st taxable year beginning after August 1, 1987.

(2) REDUCTION IN AMOUNTS TO WHICH SECTION APPLIES.—Notwithstanding paragraph (1), this section shall only apply to that portion of the qualified research and experimental expenditures for the taxable year referred to in paragraph (1) which bears the same ratio to the total amount of such expenditures as—

(A) the lesser of 4 months or the number of months in the taxable year, bears to

(B) the number of months in the taxable year.

SEC. 797. ELECTION TO BE TREATED AS DOMESTIC CORPORATION.

(a) IN GENERAL.—Section 953 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(d) ELECTION BY FOREIGN INSURANCE COMPANY TO BE TREATED AS DOMESTIC CORPORATION.—

"(1) IN GENERAL.—If—

"(A) a foreign corporation is a controlled foreign corporation (as defined in section 957(a) by substituting '25 percent or more' for 'more than 50 percent' and by using the definition of United States shareholder under 953(c)(1)(A)),

"(B) such foreign corporation would qualify under part I or II of subchapter L for the taxable year if it were a domestic corporation,

"(C) such foreign corporation meets such requirements as the Secretary shall prescribe to ensure that the taxes imposed by this chapter on such foreign corporation are paid, and

"(D) such foreign corporation makes an election to have this paragraph apply and waives all benefits to such corporation granted by the United States under any treaty,

for purposes of this title, such corporation shall be treated as a domestic corporation.

"(2) PERIOD DURING WHICH ELECTION IS IN EFFECT.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), an election under paragraph (1) shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

"(B) TERMINATION.—If a corporation which made an election under paragraph (1) for any taxable year fails to meet the requirements of subparagraphs (A), (B), and (C), of paragraph (1) for any subsequent taxable year, such election shall not apply to any taxable year beginning after such subsequent taxable year.

"(3) TREATMENT OF LOSSES.—If any corporation treated as a domestic corporation under this subsection is treated as a member of an affiliated group for purposes of chapter 6 (relating to consolidated returns), any loss of such corporation shall be treated as a dual consolidated loss (as defined in section 1503(d)).

"(4) EFFECT OF ELECTION.—

"(A) IN GENERAL.—For purposes of section 367, any foreign corporation making an election under paragraph (1) shall be treated as transferring (as of the 1st day of the 1st taxable year to which such election applies) all of its assets to a domestic corporation in connection with an exchange to which section 354 applies.

"(B) EXCEPTION FOR PRE-1988 EARNINGS AND PROFIT.—

"(i) IN GENERAL.—Earnings and profits of the foreign corporation accumulated in taxable years beginning before January 1, 1988, shall not be included in the gross income of the persons holding stock in such corporation by reason of subparagraph (A).

"(ii) TREATMENT OF DISTRIBUTIONS.—For purposes of this title, any distribution made by a corporation to which an election under

paragraph (1) applies out of earnings and profits accumulated in taxable years beginning before January 1, 1988, shall be treated as a distribution made by a foreign corporation.

"(iii) CERTAIN RULES TO CONTINUE TO APPLY TO PRE-1988 EARNINGS.—The provisions specified in clause (iv) shall be applied without regard to paragraph (1), except that, in the case of a corporation to which an election under paragraph (1) applies, only earnings and profits accumulated in taxable years beginning before January 1, 1988, shall be taken into account.

"(iv) SPECIFIED PROVISIONS.—The provisions specified in this clause are:

"(I) Section 1248 (relating to gain from certain sales or exchanges of stock in certain foreign corporations).

"(II) Subpart F of part III of subchapter N to the extent such subpart relates to earnings invested in United States property or amounts referred to in clause (ii) or (iii) of section 951(a)(1)(A).

"(III) Section 884 to the extent the foreign corporation reinvested 1987 earnings and profits in United States assets.

"(5) EFFECT OF TERMINATION.—For purposes of section 367, if—

"(A) an election is made by a corporation under paragraph (1) for any taxable year, and

"(B) such election ceases to apply for any subsequent taxable year,

such corporation shall be treated as a domestic corporation transferring (as of the 1st day of such subsequent taxable year) all of its property to a foreign corporation in connection with an exchange to which section 354 applies.

"(6) ADDITIONAL TAX ON CORPORATION MAKING ELECTION.—

"(A) IN GENERAL.—If a corporation makes an election under paragraph (1), the amount of tax imposed by this chapter for the 1st taxable year to which such election applies shall be increased by the amount determined under subparagraph (B).

"(B) AMOUNT OF TAX.—The amount of tax determined under this paragraph shall be equal to the lesser of—

"(i) ¾ of 1 percent of the aggregate amount of capital and accumulated surplus of the corporation as of December 31, 1987, or

"(ii) $1,500,000."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1987.

SEC. 798. REPEAL OF SECRETARIAL AUTHORITY TO PRESCRIBE CLASS LIVES.

Paragraph (1) of section 168(i) of the 1986 Code is amended—

(1) by adding at the end of subparagraph (B) the following new sentence: "Nothing in this subparagraph shall authorize the Secretary to prescribe class lives which are longer than the lives determined under subparagraph (A).", and

(2) by striking out subparagraph (D) and by redesignating subparagraph (E) as subparagraph (D).

SEC. 799. REVERSION OF QUALIFIED PENSION PLAN ASSETS.

(a) TEMPORARY INCREASE IN EXCISE TAX ON REVERSION.—

(1) IN GENERAL.—In the case of any employer reversion from a qualified plan received after July 26, 1988, and before May 1, 1989, section 4980(a) of the Internal Revenue Code of 1986 shall be applied by substituting "60 percent" for "10 percent".

(2) CASES WHERE NOTICE GIVEN.—Paragraph (1) shall not apply to any reversion pursuant to a plan termination if—

(A) with respect to plans subject to title IV of the Employee Retirement Income Security Act of 1974, a notice of intent to terminate required under such title was provided to participants (or if no participants, to the Pension Benefit Guaranty Corporation) before July 27, 1988;

(B) with respect to plans subject to title I of such Act, a notice of intent to reduce future accruals required under section 204(h) of such Act was provided to participants in connection with the termination before July 27, 1988; or

(C) with respect to plans not subject to title I or title IV of such Act, the board of directors of the employer approved the termination or the employer took other binding action before July 27, 1988.

(b) TIME FOR PAYMENT OF TAX.—

(1) IN GENERAL.—Section 4980(c) of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new paragraph:

"(4) TIME FOR PAYMENT OF TAX.—For purposes of subtitle F, the time for payment of the tax imposed by subsection (a) shall be the last day of the month following the month in which the employer reversion occurs."

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to reversions received on or after May 1, 1989.

TITLE VIII—MEDICARE AND MEDICAID MINOR AND TECHNICAL AMENDMENTS

SEC. 801. HOSPITAL PAYMENTS FOR CATASTROPHIC ILLNESS.

(a) IN GENERAL.—Section 104(c)(2) of the Medicare Catastrophic Coverage Act of 1988 is amended—

(1) by striking "cost reporting periods beginning on or after October 1, 1988" and inserting "portions of cost reporting periods occurring on or after January 1, 1989"; and

(2) by inserting before the period at the end the following: ", without regard to whether such a hospital is paid on the basis described in subparagraph (A) or (B) of section 1886(b)(1) of such Act".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in the Medicare Catastrophic Coverage Act of 1988.

SEC. 802. TREATMENT OF CERTAIN HOSPITALS AS RURAL HOSPITALS FOR CERTAIN PURPOSES.

(a) IN GENERAL.—Section 1886(d)(8) of the Social Security Act (42 U.S.C. 1395ww(d)(8)) is amended by adding at the end of subparagraph (C) the following new sentence: "For purposes of computing the wage indices under this section, hospitals to which subparagraph (B) applies shall be treated as rural hospitals.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the Medicare Catastrophic Coverage Act of 1988.

SEC. 803. DEMONSTRATION PROJECTS WITH RESPECT TO CHRONIC VENTILATOR-DEPENDENT UNITS IN HOSPITALS.

(a) IN GENERAL.—Section 429(a) of the Medicare Catastrophic Coverage Act of 1988 is amended by striking "up to" each place it appears and inserting in lieu thereof "at least".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the Medicare Catastrophic Coverage Act of 1988.

SEC. 804. ELECTION OF PERSONNEL POLICY FOR COMMISSION EMPLOYEES.

(a) IN GENERAL.—With respect to employees of the Prospective Payment Assessment Commission as described in section 1886(e)(2) of the Social Security Act (42 U.S.C. 1395ww(e)(2)) hired before December 22, 1987, such employees shall have the option to elect within 60 days of the date of enactment of this Act to be covered under either the personnel policy in effect with respect to such employees before December 22, 1987 or under the employees coverage provided under section 1886(e)(6)(D) of the Social Security Act.

(b) EFFECTIVE DATE.—The provisions of this section shall take effect on the date of enactment of this Act.

SEC. 805. INCREASE IN AUTHORIZATION FOR THE PATIENT OUTCOME ASSESSMENT RESEARCH PROGRAM.

(a) IN GENERAL.—Section 1875(c)(3) of the Social Security Act (42 U.S.C. 1395ll(c)(3)) is amended to read as follows:

"(3)(A) For purposes of carrying out the research program, there are authorized to be appropriated—

"(i) from the Federal Hospital Insurance Trust Fund two-thirds of the amount specified in subparagraph (B), and

"(ii) from the Federal Supplementary Medical Insurance Trust Fund one-third of the amount specified in subparagraph (B).

"(B) The amount specified in this subparagraph is—

"(i) $7,500,000 for fiscal year 1988,

"(ii) $10,000,000 for fiscal year 1989,

"(iii) $20,000,000 for fiscal year 1990, and

"(iv) $30,000,000 for fiscal year 1991.".

(b) EFFECTIVE DATE.—The amendments made by this section shall become effective on the date of enactment of this Act.

SEC. 806. PAYMENT ADJUSTMENT TO ORGANIZATIONS WITH RISK-SHARING CONTRACTS.

(a) IN GENERAL.—Any organization having a risk-sharing contract in effect under section 1876(g) of the Social Security Act on or after January 1, 1988, and before December 31, 1988, may submit to the Secretary of Health and Human Services a revised adjusted community rate for calendar year 1988, reflecting any increase in such rate resulting from the Secretary's manual transmission clarifying eligibility guidelines for extended care services. If the Secretary approves such revised rate, the Secretary shall make additional payment to such eligible organization equal to the increase in such rate for such year. The Secretary shall make a determination with respect to such revised rate within 90 days after the revised rate is submitted by the eligible organization.

(b) EFFECTIVE DATE.—Subsection (a) shall become effective with respect to risk-sharing contracts in effect on or after January 1, 1988.

SEC. 807. FEE SCHEDULE FOR PAYMENTS TO CERTIFIED REGISTERED ANESTHETISTS.

(a) IN GENERAL.—Section 1833(l)(3)(B) of the Social Security Act (42 U.S.C. 1395(l)(3)(B)) is amended by inserting "plus applicable coinsurance" after "would have been paid".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective as if included in the amendments made by section 9320 of the Omnibus Budget Reconciliation Act of 1986.

SEC. 808. CLARIFICATION OF COVERED CERTIFIED NURSE-MIDWIFE SERVICES.

(a) IN GENERAL.—Section 1861(gg)(1) of the Social Security Act (42 U.S.C.

1395x(gg)(1)) is amended by adding at the end thereof ", whether or not such services are provided during the maternity cycle".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective as if included in the amendments made by section 4073 of the Omnibus Budget Reconciliation Act of 1987.

SEC. 809. COVERAGE OF PSYCHOLOGIST SERVICES WHEN PROVIDED ON-SITE AT A COMMUNITY HEALTH CENTER OR OFF-SITE AS PART OF A TREATMENT PLAN.

(a) IN GENERAL.—Subsection (ii) of section 1861 of the Social Security Act (42 U.S.C. 1395x(ii)) is amended by striking "(as defined by the Secretary) at a community mental health center (as such term is used in the Public Health Service Act)" and inserting in lieu thereof "(as defined by the Secretary) on-site at a community mental health center (as such term is used in the Public Health Service Act), and such services necessarily furnished off-site (other than at an off-site office of such psychologist) as part of a treatment plan".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective as if included in the amendments made by section 4077(b) of the Omnibus Budget Reconciliation Act of 1987.

SEC. 810. TRIP FEES FOR CLINICAL LABORATORIES.

(a) IN GENERAL.—Section 1833(h)(3) of the Social Security Act is amended by adding at the end thereof the following new sentence:

"In establishing a fee to cover the transportation and personnel expenses for trained personnel to travel to the location of an individual to collect a sample, the Secretary shall allow a laboratory to bill for such expenses on the basis of either (i) a flat fee per sample collection or (ii) the number of miles traveled and the personnel costs associated with the collection of each individual sample.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after January 1, 1989.

(c) BUDGET NEUTRALITY.—The Secretary shall instruct carriers to modify fees in accordance with the amendment made by subsection (a) in such a manner that the total cost of such fees is the same as would have been the case without such amendment.

SEC. 811. REQUIREMENT OF PHYSICIAN CARE AND PLAN WITH RESPECT TO OUTPATIENT PHYSICAL THERAPY SERVICES LIMITED TO THE PROVISION OF SUCH SERVICES TO MEDICARE RECIPIENTS.

(a) IN GENERAL.—Section 1861(p) of the Social Security Act (42 U.S.C. 1395x(p)) is amended by adding at the end thereof the following new sentence: "The requirements of this subsection that an individual be under the care of a physician, and that the services be provided pursuant to a plan that is established and reviewed by a physician, shall apply only to individuals with respect to whom payment may be made under this title.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective with respect to services provided after December 31, 1988.

SEC. 812. DELAY IN ISSUANCE OF FINAL REGULATIONS CONCERNING THE USE OF VOLUNTARY CONTRIBUTIONS OR PROVIDER-PAID TAXES BY STATES TO RECEIVE FEDERAL MATCHING FUNDS.

The Secretary of Health and Human Services shall not issue any final regulation prior to February 15, 1989, changing the treatment of voluntary contributions or provider-paid taxes utilized by States to receive Federal matching funds under title XIX of the Social Security Act.

SEC. 813. FORMULA MODIFICATION FOR DETERMINING STATE EXPENDITURES UNDER THE MEDICAID LONG-TERM CARE WAIVER PROGRAM.

(a) IN GENERAL.—Section 1915(d)(5)(B) is amended—

(1) by redesignating paragraph (6) as paragraph (7); and

(2) by adding a new paragraph (6) as follows:

"(6) The Secretary shall adjust the projected amount determined under paragraph (5)(B) with respect to the State's expenditure for medical assistance under this title for skilled nursing facility services, intermediate care facility services, and home and community-based services for individuals who have attained the age of 65 for the base year to reflect the enactment of any amendment to this title which results in increased costs of providing such services, or requires additional long-term care services, under this title subsequent to the end of such base year.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective with respect to the determination of State expenditures beginning in waiver year 1989.

SEC. 814. EXTENSION OF TIME PERIOD FOR CERTAIN INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED TO SUBMIT PLANS OF CORRECTION OR REDUCTION.

(a) IN GENERAL.—Section 1922 of the Social Security Act (42 U.S.C. 1396r-3) is amended—

(1) in the first sentence by striking "residents" and inserting in lieu thereof "residents (including failure to provide active treatment),";

(2) in subsection (c)(5) by inserting ", and to provide active treatment for," after "safety of"; and

(3) in subsection (f) by striking "within 3 years" and all that follows through the period and by inserting in lieu thereof "by January 25, 1991.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective upon the date of enactment of this Act.

SEC. 815. NURSING FACILITY DECERTIFICATION HEARING PROCEDURES.

(a) IN GENERAL.—Paragraph (2) of section 1910(b) of the Social Security Act (42 U.S.C. 1396i(b)) is amended by striking out the first sentence thereof and inserting in lieu thereof:

"Any skilled nursing facility or intermediate care facility which is dissatisfied with a determination by the Secretary that it no longer qualifies as a skilled nursing facility or intermediate care facility for purposes of this title, shall be entitled to a hearing by the Secretary to the same extent as is provided in section 205(b). At such hearing, the facility may submit to the Secretary evidence of compliance based on Federal or State surveys conducted after the determination under paragraph (1). The Secretary shall take into account such evidence, but such compliance shall not preclude a finding that the facility's eligibility be terminated. The Secretary shall also take into account the facility's record of noncompliance and the extent and likely duration of such compliance. Such facility shall also be entitled to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to any proceeding where there has not yet been a final determination by the Secretary (as defined for purposes of judicial review) as of the date of enactment of this Act.

TITLE IX—MISCELLANEOUS INCOME SECURITY AMENDMENTS

Subtitle A—National Academy of Social Insurance

SEC. 901. CHARTER.

The National Academy of Social Insurance, organized and incorporated under the laws of the District of Columbia, is hereby recognized as such and is granted a charter.

SEC. 902. POWERS.

The National Academy of Social Insurance (in this subtitle referred to as the "Academy") shall have only those powers granted to it through its bylaws and articles of incorporation filed in the State or States in which it is incorporated and subject to the laws of such State or States.

SEC. 903. OBJECTS AND PURPOSES OF CORPORATION.

The objects and purposes for which the Academy is organized shall be those provided in its articles of incorporation and shall include—

(1) promoting an informed and nonpartisan study of, and education with respect to, social insurance,

(2) bringing together experts with diverse backgrounds to consider social insurance issues in an interdisciplinary way,

(3) assisting in the development of social insurance scholars and administrators,

(4) encouraging research and studies on topics of relevance to social insurance, and

(5) sponsoring seminars and other public meetings.

SEC. 904. SERVICE OF PROCESS.

With respect to service of process, the Academy shall comply with the laws of the State or States in which it is incorporated and the State or States in which it carries on its activities in furtherance of its corporate purposes.

SEC. 905. MEMBERSHIP.

Eligibility for membership in the Academy and the rights and privileges of members shall be as provided in the bylaws of the corporation.

SEC. 906. BOARD OF DIRECTORS; COMPOSITION; RESPONSIBILITIES.

The board of directors of the Academy and the responsibilities thereof shall be as provided in the articles of incorporation of the Academy and in conformity with the laws of the State or States in which it is incorporated.

SEC. 907. OFFICERS OF CORPORATION.

The officers of the Academy, and the election of such officers, shall be as is provided in the articles of incorporation of the Academy and in conformity with the laws of the State or States wherein it is incorporated.

SEC. 908. RESTRICTIONS.

(a) IN GENERAL.—

(1) No part of the income or assets of the corporation shall inure to any member, officer, or director of the Academy or be distributed to any such person during the life of this charter. Nothing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers and members of the Academy or reimbursement for actual necessary expenses in amounts approved by the board of directors.

(2) The Academy shall not make any loan to any officer, director, or employee of the corporation.

(3) The Academy and any officer and director of the corporation, acting as such officer or director, shall not contribute to,

support, or otherwise participate in any political activity or in any manner attempt to influence legislation.

(4) The Academy shall have no power to issue any shares of stock nor to declare or pay any dividends.

(5) The Academy shall not claim congressional approval or Federal Government authority for any of its activities, other than by mutual agreement.

(b) STATUS.—The Academy shall retain and maintain its status as a corporation organized and incorporated under the laws of the District of Columbia.

SEC. 909. LIABILITY.

The Academy shall be liable for the acts of its officers and agents when acting within the scope of their authority.

SEC. 910. BOOKS AND RECORDS; INSPECTION.

The Academy shall keep correct and complete books and records of account and shall keep minutes of any proceeding of the Academy involving any of its members, the board of directors, or any committee having authority under the board of directors. The Academy shall keep at its principal office a record of the names and addresses of all members having the right of vote. All books and records of such corporation may be inspected by any member having the right to vote, or by any agent or attorney of such member, for any proper purpose, at any reasonable time. Nothing in this section shall be construed to contravene any applicable State law.

SEC. 911. AUDIT OF FINANCIAL TRANSACTIONS.

The first section of the Act entitled "An Act to provide for audit of accounts of private corporations established under Federal laws", approved August 30, 1964 (36 U.S.C. 1101), is amended by inserting after paragraph (70) the following:

"(71) National Academy of Social Insurance.".

SEC. 912. ANNUAL REPORT.

The Academy shall report annually to the Congress concerning the activities of the corporation during the preceding fiscal year. Such annual report shall be submitted at the same time as is the report of the audit required by section 911 of this subtitle. The report shall not be printed as a public document.

SEC. 913. RESERVATION OF RIGHT TO AMEND OR REPEAL CHARTER.

The right to alter, amend, or repeal this subtitle is expressly reserved to the Congress.

SEC. 914. DEFINITION OF "STATE".

For purposes of this subtitle, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

SEC. 915. TAX-EXEMPT STATUS.

The corporation shall maintain its status as an organization exempt from taxation as provided in the Internal Revenue Code. If the corporation fails to maintain such status, the charter granted hereby shall expire.

SEC. 916. TERMINATION.

If the corporation shall fail to comply with any of the restrictions or provisions of this subtitle the charter granted hereby shall expire.

Subtitle B—Foster Care Independent Living Initiatives

SEC. 921. FOSTER CARE INDEPENDENT LIVING INITIATIVES.

(a) EXTENSION OF INDEPENDENT LIVING PROGRAM.—Section 477 of the Social Security Act (42 U.S.C. 677) is amended—

(1) by striking "1987 and 1988" in subsections (a) and (e)(1) and inserting "1987, 1988, and 1989";

(2) by striking "for fiscal years 1988" and all that follows in subsection (c) and inserting "for the fiscal year 1988 or 1989, such description and assurances must be submitted prior to January 1 of such fiscal year.";

(3) by striking "Not later than March 1, 1988" in subsection (g)(1) and inserting "Not later than the first January 1 following the end of each fiscal year";

(4) by inserting "during such fiscal year" in subsection (g)(1) after "carried out";

(5) by striking "(2) Not later than July 1, 1988," in subsection (g)(2) and inserting the following:

"(2)(A) Not later than July 1, 1988, the Secretary shall submit an interim report on the activities carried out under this section.

"(B) Not later than March 1, 1989,"; and

(6) by striking "the fiscal year 1987" in subsection (g)(2) and inserting "fiscal years 1987 and 1988".

(b) PERMISSION TO EXPEND UNOBLIGATED FUNDS APPROPRIATED FOR 1987 IN 1988 AND 1989.—Subsection (f) of section 477 of such Act (42 U.S.C. 677(f)) is amended by inserting after and below paragraph (3) the following:

"Notwithstanding paragraph (3), payments made to a State under this section for fiscal year 1987 and unobligated may be expended by such State in fiscal years 1988 and 1989.".

(c) INCLUSION IN INDEPENDENT LIVING PROGRAM OF NON-AFDC FOSTER CARE CHILDREN.—Subsection (a) of section 477 of such Act (42 U.S.C. 677(a)) is amended—

(1) by inserting "(1)" before "Payments";

(2) by striking "children" and all that follows through "age 16," and inserting "children described in paragraph (2) who have attained age 16"; and

(3) by adding at the end the following new paragraph:

"(2) A program established and carried out under paragraph (1)—

"(A) shall be designed to assist children with respect to whom foster care maintenance payments are being made by the State under this part, and

"(B) may at the option of the State also include any or all other children in foster care under the responsibility of the State.".

(d) INCLUSION IN INDEPENDENT LIVING PROGRAM OF CERTAIN FORMER FOSTER CARE CHILDREN.—Paragraph (2) of section 477(a) of such Act (42 U.S.C. 677(a)(2)) (as added by subsection (c) of this section) is further amended—

(1) by striking "and" in subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting ", and"; and

(3) by adding at the end the following new subparagraph:

"(C) may at the option of the State also include any child to whom foster care maintenance payments were previously made by a State under this part and whose payments were discontinued on or after the date such child attained age 16, and any child who previously was in foster care described in subparagraph (B) and for whom such care was discontinued on or after the date such child attained age 16, but such child may not be so included after the end of the 6-month period beginning on the date of discontinuance of such payments or care; and a written transitional independent living plan of the type described in subsection (d)(6) shall be developed for such child as a part of such program.".

(e) DETERMINATION OF SERVICES NEEDED FOR TRANSITION TO INDEPENDENT LIVING.—Subparagraph (C) of section 475(5) of such Act (42 U.S.C. 675(5)(C)) is amended by inserting "and, in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living" before the semicolon.

(f) LIMITATION ON USE OF FUNDS.—Paragraph (3) of section 477(e) of such Act (42 U.S.C. 677(e)(3)) is amended by adding at the end the following: "Amounts payable under this section may not be used for the provision of room or board".

(g) EFFECTIVE DATE.—(1) The amendments made by subsections (a), (b), and (e) shall become effective on October 1, 1988, but only to the extent that funds therefor are provided in Appropriation Acts.

(2) The amendments made by subsections (c), (d), and (f) shall become effective on the date of the enactment of this Act.

I. ADDITIONAL TECHNICAL CORRECTIONS AND MODIFICATIONS TO TECHNICAL CORRECTIONS

Corporate Tax Provisions

1. *Outbound liquidations.* Provide that the technical correction relating to transfers of property to a foreign corporation that would otherwise qualify as a tax-free reorganization would apply only to transactions occurring after June 21, 1988, except that such technical correction would not apply to reorganizations for which a plan of reorganization had been adopted before June 22, 1988.

2. *Mirror subsidiary transition rule.* Clarify that, for purposes of the exception from the effective date provision concerning mirror subsidiary transactions in cases where 80 percent of the stock of the distributing corporation is acquired by the distributee, the ownership of distributees which are members of the same affiliated group may be aggregated in certain cases.

3. *Section 384 and common control exception.* Provide that if the gain corporation, the loss corporation or both were not in existence throughout the five year period, the exception will be applied by substituting the shorter of the periods during which the gain corporation, the loss corporation, or both were in existence.

4. *Section 384 and treatment of affiliated corporations.* Clarify in legislative history that not only post-affiliation gains or losses, but also pre-affiliation gains or losses which were not limited under section 384, are not subject to the limitations of section 384 upon the merger of members of the same affiliated group.

5. *General Utilities repeal and reorganizations of RICs and REITs.* Provide that the technical correction clarifying that the Treasury's regulatory authority to ensure that the purposes of *General Utilities* repeal is not circumvented through the use of REITs or RICs would not apply to any reorganization involving a RIC or REIT if by June 10, 1987: 1) the board of directors of one of the parties to the reorganization adopted a resolution to solicit shareholder approval for the transaction; or 2) the shareholders or the board of directors of one of the parties to the reorganization approved the transaction.

6. *General Utilities repeal and reorganizations involving RICs and REITs.* The Internal Revenue Service announced that it intends to issue regulations which would require, as of June 10, 1987, that a RIC or REIT disposing of built-in gain assets would not only have to pay a corporate-level tax

on the built in gain but also distribute the proceeds in excess of the corporate-level tax to shareholders. Provide legislative history indicating that the Committee expects the Internal Revenue Service to use its section 7805(b) authority to provide relief to adversely affected taxpayers.

7. *Special rule relating to 1976 Act net operating loss limitations.* Clarify that warrants would not be treated as stock under section 382 of the 1976 Act.

8. *Real Estate Investment Trusts.* The provision in the bill treating certain interest rate swap and cap agreements as giving rise to income qualifying under the 95-percent test and as securities under the 30-percent test would not be treated as creating a negative inference as to whether other interest rate swap and cap agreements should be similarly treated.

Capital Cost Provisions

1. *Delete technical correction.* Delete a provision in the technical corrections bill relating to the Riverwalk project in New York City.

2. *Offset of investment tax credit refunds.* Clarify that refunds payable under section 212 of the 1986 Act (providing for cash-out of investment tax credits) generally may not be offset by the IRS with the excise tax imposed by section 4971 for failure to meet minimum funding rules for qualified plans.

Minimum Tax Provisions

1. *Incentive Stock Options.* The bill clarifies that for all purposes of the individual minimum tax, stock acquired pursuant to the exercise of an incentive stock option will be treated as a nonqualified stock option. Provide that the provision in the bill applies only to options exercised after December 31, 1987 (as opposed to October 16, 1987).

Accounting Provisions

1. *Taxable years of common trust funds.* The amendment would clarify that the effective date rules applicable to entities required by the 1986 Act to adopt a calendar year would also apply to common trust funds for taxable years beginning after December 31, 1987.

Financial Institutions

1. *Limitations on bad debt reserves.* Delete the technial correction which provides that, in the case of a large bank, an election made by a member of a parent-subsidairy controlled group concerning the method of recapturing an existing bad debt reserve is binding on all banks that are members of such parent-subsidary controlled group for the taxable year of the election. Instead, the amendment provides that each such member of a parent-subsidiary controlled group may make a separate election concerning the method of recapturing its existing bad debt reserve.

Insurance Provisions

1. *Property and Casualty Insurance Companies.* Clarify that the rule of former section 825(g), eliminating loss carryovers of corporations electing to be taxed only on investment income, continues to apply. The provision is effective as if enacted with the Tax Reform Act of 1986.

Pensions and Deferred Compensation

1. *Retirement bond distributon rules.* Under the amendment, permissible rollovers from retirement bonds (sec. 409) could be delayed under rules similar to temporary Treasury rules delaying the application of the required distribution rules to IRAs. (Title XI of the 1986 Act)

2. *Reporting of dependent care assistance.* The bill modifies an employer's obligation to report dependent care assistance. Under the bill, the amount required to be reported for a year with respect to an employee is the amount such employee incurs for dependent care assistance during the year. Under the amendment, an employer may treat an amount electively contributed by an employee under a cafeteria plan for dependent care assistance for a year as an amount incurred for dependent care assistance by such employee for such year. (Revenue Act of 1987)

3. *Treatment of plan spin-offs, transfers, etc.* The bill provides that, in the case of plan spin-offs and similar transactions (within a controlled group (involving defined benefit plans, assets in excess of the benefits that would have been provided immediately before the transaction (if the plan then terminated) are allocated on a proportional basis. The amendment would provide two exceptions to this rule. First, if pursuant to the plan spin-off or similar transaction, one or more of the defined benefit plans is terminated, such plan or plans would be treated like a plan transferred outside the controlled group and thus would be exempt from the proportional allocation rule. Second, the proportional allocation rule would not apply to a plan that is spun off from a multiple employer plan if, after the spin-off, no employer (or member of the same controlled group) maintaining the multiple employer plan maintains the spun-off plan. (Revenue Act of 1987)

4. *Variable rate premium.* Under the bill, if the deductible contributions cannot be made to a plan for a plan year because of the full funding limitation, no additional PBGC premium would be required with respect to the plan in the following plan year. The amendment would limit this relief from the additional PBGC premium to situations in which no deductible contributions can be made because of the new 150 percent of current liability component of the full funding limitation. (Pension Protection Act)

5. *ERISA, etc., amendments.* Under the agreement, generally technical amendments to Titles I and IV of the Employee Retirement Income Security Act of 1974 (ERISA) or to the Public Health Service Act, as well as corresponding amendments to the Internal Revenue Code, and a correction of a date in a transition rule with respect to the effective date of the Multiemployer Pension Plan Amendments Act of 1980 would be deleted from the bill.

Foreign Provisions

1. *Liquidation of possession corporation.* Clarify the technical correction in the bill which treats gains derived from the liquidation of certain possession corporations as foreign source, so that the three-year testing period would be applied by reference to the year in which the liquidating distribution occurs, rather than the year in which the liquidation is deemed to occur.

2. *Effective date of qualified electing fund election.* Provides that, notwithstanding the normal deadline provided in the Code by which a passive foreign investment company must make a qualified electing fund election, the period for making the election will in no event expire before the date 60 days after the date of the enactment of the bill. This technical correction was in the introduced version of S. 2238 and was inadvertently omitted from the committee-passed bill.

3. *Retroactive qualified electing fund election.* Provide regulatory authority to allow a passive foreign investment company (PFIC) to make a late qualified electing fund election where the foreign corporation reasonably believed, as of the normal due date for making the election with respect to an earlier taxable year, that it was not a PFIC in that year. This technical correction was in the introduced version of S. 2238 and was inadvertently omitted from the committee-passed bill.

Tax Exempt Bond Provisions

1. *Deletion of Technical Correction.* The amendment would delete section 113(g)(3)(C) from the bill.

Estate and Gift Taxes

A. Estate Freezes

1. *Qualified debt.* The provision in the bill requiring that the fixed maturity date of qualified debt be within 15 years of the date of issue would be eliminated. In addition, the requirement that qualified debt not grant voting rights would be clarified so as to permit voting rights when there is a default as to payment of interest or principal.

2. *Consideration.* The provision directing that appropriate adjustments be made for the value of the retained interest would be clarified to provide for adjustments for consideration received by the transferor. In addition, the Secretary of the Treasury would be directed to study how much adjustments should best be made.

3. *Exceptions.* The bill would be amended to allow taxpayers to modify (prior to 1/1/90) their debt instruments, agreements, or other retained interests in order to fall within the statutory exceptions.

4. *Right of contribution.* The bill would be amended to that there would be no right of contribution against a charitable remainder trust for gift and estate tax attributable to the operation of the provision. In addition, there would be no right of contribution if a decedent lacking a will so directs in a provision of a trust which serves as a substitute for a will.

5. *Deemed gift.* The amount of a gift deemed by virtue of a later transfer by either the original transferor or transferee would be reduced by the value of the original transferor's right to recover such tax from the transferee. A subsequent failure to recover such tax would give rise to a gift even if recovery is impossible.

B. Generation Skipping Transfer Tax

1. *Definition of executor.* If there is no executor or administrator appointed, qualified and acting within the United States, then any person in actual or constructive possession of any property of the decedent would be treated as the executor for generation-skipping transfer tax purposes.

Compliance

1. *Section 6323.* Provide that State legislation merely conforming to or reenacting Federal law establishing a national filing system for instruments affecting interests in personal property does not constitute a second office designated by the State or filing notices of Federal tax liens.

2. *Section 6332.* Extend the immunity from liability of a person honoring an IRS levy to apply not only with respect to the delinquent taxpayer but also any other person.

3. *Section 6503.* Conform the statute of limitations rule for levies to that for liens so that if a timely proceeding in court for the collection of tax is commenced, the period during which such tax may be collected by levy shall not expire as long as the tax is still collectible.

Excise Taxes

1. *Aviation fuel used in international flights not subject to LUST tax.* Under the Superfund Reauthorization and Amendments Act of 1986, aviation fuel used as supplies in an aircraft in foreign trade was exempt from the LUST tax. The provisions relating to the collection of the diesel fuel excise tax in the Revenue Act of 1987 inadvertently terminated this exemption. The amendment would restore this exemption.

Miscellaneous Provisions

1. *Treatment of payments from certain mining reclamation programs.* Section 118(g)(6) of the bill clarifies the present law exclusion from gross income, under section 126 of the Code, of certain payments received under environmental and conservation programs. The amendment would delete this provision.

2. *Basis adjustment for market discount currently included in income.* Taxpayers electing to include market discount currently in income would be allowed a basis adjustment for amounts so included.

II. PROVISIONS THAT CLOSE LOOPHOLES

A. Corporate Estimated Tax Speedup (Sec. 700) [1]

Under present law, corporations are required to make estimated tax payments four times a year. For small corporations, each installment is required to be based on an amount equal to the lesser of (1) 90 percent of the tax shown on the return or (2) 100 percent of the tax shown on the preceding year's return. For large corporations, each installment is required to be based on an amount equal to 90 percent of the tax shown on the return (except that the first payment may be based on 100 percent of the tax shown on the preceding year's return). For both large and small corporations, the amount of any payment is not required to exceed an amount which would be due if the total payments for the year up to the required payment equal 90 percent of the tax which would be due if the income already received during the current year were placed on an annual basis. Any reduction in a payment resulting from using this annualization rule must be made up in the subsequent payment if the corporation does not use the annualization rule for that subsequent payment. However, if the subsequent payment makes up at least 90 percent of the earlier shortfall, no penalty is imposed.

The provision would require a corporation that uses the annualization method for a prior payment to make up the entire shortfall (rather than 90 percent of the shortfall) in the subsequent payment in order to avoid an estimated tax penalty. This provision would change the provision relating to corporate estimated taxes included in S. 2238 as reported by the Finance Committee. The provision would be effective for estimated tax payments required to be made after September 30, 1988.

B. Treatment of Single Premium and Other Investment-Oriented Life Insurance Contracts (Sec. 701)

Under present law, the undistributed investment income earned on premiums credited under a contract that satisfies a statutory definition of life insurance is not subject to current taxation to the owner of the contract. Death benefits under a life insurance contract are excluded from the gross income of the recipient. Amounts received under a life insurance contract prior to the death of the insured generally are not includible in gross income to the extent that the amounts received are less than the taxpayer's investment in the contract. Amounts borrowed under a life insurance contract generally are not treated as received under the contract and, consequently, are not includible in gross income.

The provision would modify the treatment of loans and other amounts received under a class of life insurance contracts that are statutorily defined as modified endowment contracts. First, amounts received under modified endowment contracts would be treated first as income and then as recovered basis. In addition, loans under modified endowment contracts and loans secured by modified endowment contracts would be treated as amounts received under the contract. An additional 10-percent income tax would be imposed on certain amounts received that are includible in gross income.

Under the provision, a modified endowment contract would be defined as any contract meeting the present-law definition of life insurance but failing to satisfy a 7-pay test. A modified endowment contract would also include any life insurance contract received in exchange for a modified endowment contract. A contract that is materially changed would be considered a new contract that is subject to the 7-pay test as of the date that the material change takes effect.

The provision would apply to contracts that are entered into or that are materially changed on or after June 21, 1988.

The provision is the same as the provision contained in H.R. 4333 as passed by the House with the following clarifications and modifications:

1. Distribution rules

a. The assignment or pledge of a modified endowment contract would not be treated as an amount received under the contract if the assignment or pledge is solely to cover the payment of burial expenses or prearranged funeral expenses and the policyholder does not receive cash directly or indirectly in connection with the assignment.

b. Any amount payable or borrowed under a modified endowment contract would not be included in gross income to the extent that the amount is retained by the insurance company as a premium or other consideration paid for the contract or as interest or principal paid on a loan under the contract.

c. For purposes of the distribution rules, the cash surrender value of a modified endowment contract would be reduced by the amount of any loan that is treated as received under the contract under the revised income inclusion rules. In addition, the investment in the contract and the cash surrender value of the contract would be increased by the amount of payments on a loan to the extent attributable to loans treated as received under the contract under the revised income inclusion rules.

d. A contract would be considered a modified endowment contract for (1) distributions that occur during the contract year that the contract fails (whether due to a death benefit reduction or otherwise) to satisfy the 7-pay test and all subsequent contract years, and (2) distributions that are made in anticipation of the contract failing to satisfy the 7-pay test as determined by the Treasury Department.

2. 7-pay test

a. The mortality charges taken into account in computing the 7-pay premiums would equal the mortality charges specified in the prevailing commissioners' standard table (as defined in sec. 807(d)(5)) at the time the contract is issued or materially changed (currently 1980 CSO) except to the extent provided otherwise by the Treasury Department (e.g., with respect to substandard risks).

b. In the case of a contract that provides an initial death benefit of $10,000 or less and that requires at least 20 nondecreasing annual premium payments, the amount of the 7-pay premium for each year would be increased by an expense charge of $75. All contracts issued by the same insurance company would be treated as a single contract for purposes of applying this rule.

c. Riders to contracts would be considered part of the base insurance contract for purposes of the 7-pay test.

d. The complete surrender of a life insurance contract during the first 7 years of the contract would not in itself cause the contract to be treated as a modified endowment contract.

e. The lapse of a contract resulting in paid-up insurance in a reduced amount due to the nonpayment of premiums would not be considered in applying the 7-pay test if the contract is reinstated to the original face amount within 180 days after the lapse.

f. The amount paid under a contract would be reduced by nontaxable distributions to which section 72(e) applies whether or not attributable to a reduction in the originally scheduled death benefit.

3. Material change rules

a. The rule that a death benefit increase must be required in order to satisfy the statutory definition of life insurance would be eliminated.

b. The definition of necessary premium for guideline premium contracts would be modified to allow aggregate premium payments equal to the greater of (1) the guideline single premium or (2) the sum of the guideline level premiums to date (without regard to the deemed cash value). For this purpose, the guideline single premium and the guideline level premiums would be based on the lowest death benefit payable during the first 7 contract years.

c. A decrease in future benefits under a contract would not be considered a material change.

d. Policyholder dividends would be considered other earnings that may increase the death benefit without triggering a material change.

e. The Treasury Department would be granted authority to provide circumstances under which a de minimis death benefit increase is not a material change (e.g., a death benefit increase that is attributable to a reasonable cost of living adjustment determined under an established index specified in the contract).

f. In the case of a contract that is materially changed, the new 7-pay premium would be adjusted to take into account only the cash surrender value of the contract as of the date of the material change.

4. Effective date

a. The provision would apply to contracts entered into on or after June 21, 1988. A contract would be considered entered into on or after June 21, 1988, if (1) on or after June 21, 1988, one or more of the future benefits under the contract are increased or a qualified additional benefit is increased or added to the contract and, prior to June 21, 1988, the owner of the contract did not have a unilateral right under the contract to

[1] Sections refer to the committee amendment (e.g., additional, nontechnical tax provisions are in new title VII).

obtain such increase or addition without providing additional evidence of insurability, or (2) the contract has been converted from a term life insurance contract into a life insurance contract providing coverage other than term insurance coverage after June 20, 1988, without regard to any right of the owner under the contract to obtain such conversion.

b. A modified endowment contract that is entered into on or after June 21, 1988, and before the date of enactment and that is exchanged (within 3 months after the date of enactment) for a life insurance contract that satisfies the 7-pay test would not be considered a modified endowment contract if gain (if any) is recognized on the exchange.

C. Repeal of Special Rules Allowing Loss Transfers by Alaska Native Corporations (Sec. 702)

Corporations established under the Alaska Native Claims Settlement Act may, for taxable years beginning before 1992, file consolidated returns with subsidiary corporations under rules more liberal than the generally applicable rules. In addition, during this period no provision or principle of law may be applied to prevent use of losses or credits of an Alaska Native Corporation by its consolidated group. The effect of these provisions is to allow Alaska Native Corporations to transfer the benefit of their tax losses and credits to other corporations, which use the losses or credits to reduce their tax liability.

Under the provision, the special consolidation rules applicable to Alaska Native Corporations (including the rule prohibiting denial of the use of losses or credits through application of any provision or principle of law) would be repealed.

The provision would be effective for losses and credits arising after April 26, 1988. In addition, losses and credits of an Alaska Native Corporation arising before that date could not be used to offset income assigned (or attributable to property contributed) on or after that date, unless such use would be allowable without regard to the special consolidation rules.

In addition, if an Alaska Native Corporation has not engaged in any loss transfer transaction prior to April 26, 1988, up to $5 million of losses and credits of such Alaska Native Corporation arising on or before December 31, 1988, may be used to offset income assigned (or attributable to property contributed) on or before December 31, 1988. The intention is to provide a period during which Alaska Native Corporations that have never undertaken a loss transfer transaction under the special rules may do so, subject to a limitation on the amount of losses that may be transferred.

D. Modification of Distilled Spirits Flavors Credit (Sec. 703)

Credit is allowed against the distilled spirits excise tax for the alcohol content of a taxable beverage that is derived from wine or from flavor components (sec. 5010). The wine credit is equal to the difference between the distilled spirits tax rate ($12.50 per proof gallon) and the tax rate applicable to wine (based on alcohol content). The flavors credit may not exceed 2.5 percent of the alcohol content of the beverage, and is equal to the amount of the distilled spirits tax. The provision would limit the flavors credit to cases where the flavors remain in the distilled spirits beverage after completion of all distillation. (No change would be made to the wine credit.)

The provision would be effective for distilled spirits removed after the date of enactment.

E. Denial of Deduction for Certain Residential Telephone Service (Sec. 704)

Under the provision, any otherwise allowable deduction would not be allowed to an individual taxpayer for any charge (including any sales or excise taxes imposed on such charge) required to be paid by the taxpayer in order to obtain local telephone service with respect to the first telephone line in a taxpayer's residence (whether or not the taxpayer's principal residence). The provision would not affect the deductibility of charges for long-distance calls, nor would it affect the deductibility of charges for equipment rental, optional services offered by the telephone company (e.g., call waiting or call forwarding), or charges attributable to additional telephone lines to a taxpayer's residence other than the first telephone line.

The provision would be effective for taxable years beginning after December 31, 1988.

F. Update IRS Valuation Tables (Sec. 705)

The IRS publishes tables that are used to value annuities, life estates, terms of years, remainders and reversions. Last published in 1984, these tables assume a 10 percent interest rate and are based on mortality assumptions published in 1969-71. On a monthly basis, the IRS publishes an applicable Federal rate, which is based on the average market yield of obligations of the United States.

The provision would require the value of any annuity, interest for life or term of years, remainder or reversionary interest to be determined under tables (or formulas) prescribed by the Secretary of the Treasury and by using an interest rate (rounded to the nearest 2/10ths of one percent) equal to 120 percent of the Federal mid-term rate in effect under section 1274(d)(1) for the month in which the valuation date falls. At the taxpayer's election, such property would be valued by reference to the Federal mid-term rate in effect for either of the two months preceding the valuation date.

The provision would apply to interests valued after the first date of the sixth calendar month beginning after the date of enactment.

III. NONCONTROVERSIAL, LOW-COST PROVISIONS

A. Corrections Affecting Agriculture

1. Special use valuation of farm property for estate tax purposes (sec. 706)

Under present law, if the executor so elects, the value of real property used as a farm or in another trade or business is its value in such use. A recapture tax is imposed if the property ceases to be used in its qualified use within 10 years (15 years for individuals dying before 1982) after the death of the person in whose estate the property was specially valued. Under the provision, a surviving spouse's cash rental of specially valued real property to a member of the spouse's family would not result in imposition of the recapture tax.

The provision would be effective for rentals occurring after December 31, 1976.

2. Discharge of indebtedness income of rural mutual or cooperative utility companies (sec. 707)

Under present law, a mutual or cooperative telephone, electric or water company qualifies for exemption from Federal income taxation if at least 85 percent of its gross income consists of amounts collected from members for the sole purpose of meeting losses and expenses of providing service to its members. Gross income of a taxpayer generally includes income from discharge of indebtedness (sec. 61(12)). Under the provision, the 85-percent test of section 501(c)(12) is to be determined without regard to any discharge of indebtedness income arising pursuant to sales of indebtedness under section 1001 of the Budget Reconciliation Act of 1986.

3. Treatment of livestock sold on account of drought (sec. 708)

Under present law, a cash method taxpayer whose principal trade or business is farming and who is forced to sell certain livestock due to drought conditions may elect to include any income from the sale of the livestock in the taxable year following the taxable year of the sale. This one-year elective deferral of income is available only if the livestock would not have been sold in the taxable year but for the drought and the drought conditions resulted in the area being designated as eligible for Federal assistance. The provision would extend the present-law provision to cattle, horses, and other livestock held for draft, breeding, dairy or sporting purposes.

The provision would apply to sales and exchanges occurring after December 31, 1987.

4. Exemption from payroll tax for certain agricultural workers (sec. 709)

The provision would exclude wages paid to certain individuals who are paid less than $150 in annual cash wages by an agricultural employer. The provision would be effective as if included in the Omnibus Budget Reconciliation Act of 1987.

To be eligible for the FICA tax exclusion the individual must (1) be employed in agriculture, (2) be a hand harvest laborer, (3) be paid on a piece-rate basis, (4) be paid piece-rates in an operation which has been, and is customarily and generally recognized as having been paid on a piece-rate basis in the region of employment, (5) commutes daily from his permanent residence to the farm on which he is so employed, and (6) has been employed in agriculture less than 13 weeks during the preceding calendar year.

B. Pensions and Employee Benefits

1. Employee benefit nondiscrimination rule modifications: church plans and cafeteria plans (sec. 710)

The Tax Reform Act of 1986 provided nondiscrimination rules applicable to statutory employee benefit plans maintained by any employer, including an employer that is a tax-exempt organization (sec. 89). The proposal would provide that the nondiscrimination requirements of section 89 do not apply to statutory employee benefit plans maintained by a church for church employees. For purposes of this proposal, the definition of a church would be the same definition that applies for purposes of exclusion from FICA taxes (sec. 3121(w)(3)). Thus, the term "church" would include (1) a convention or association of churches, (2) an elementary or secondary school that is controlled, operated, or principally supported by a church or by a convention or association of churches, and (3) any church-controlled tax-exempt organization that does not receive substantial support from governmental sources or sales of goods or services. The proposal would be effective as if included in the Tax Reform Act of 1986.

Under present law, life insurance that is funded prior to retirement under a cafeteria

plan but provided after retirement is tested for discrimination when provided. Under the proposal, such life insurance would be tested for discrimination when it is funded, based on the amount of life insurance that could at that time be purchased (assuming section 79(c) table costs) with the cafeteria plan elective contributions. This proposal would be effective as if it were part of the provision added by the Tax Reform Act of 1986 allowing post-retirement life insurance to be funded under a cafeteria plan.

Under present law, available elective contributions under a cafeteria plan may not be taken into account for purposes of the 90-percent/50-percent test under section 89. The prior committee amendment allows an employer, under certain circumstances, to take into account all available elective contributions for this purpose. The requirement that an employer either take into account all available elective contributions or none of such contributions can create unintended difficulties in certain situations. Thus, under the proposal, an employer may establish a limit on the amount of available elective contributions taken into account with respect to each employee covered under a cafeteria plan. This is consistent with the original intent of the 90-percent/50-percent test, i.e., that it be focused on available nonelective contributions. This provision would be effective as if it were enacted as part of section 89 in the Tax Reform Act of 1986.

The bill provides that for purposes of applying the nondiscrimination rules of section 89, an employer generally may treat the contribution it makes to a multiemployer plan on behalf of an employee as the benefit provided to the employee under such multiemployer plan. Under the proposal, it would be clarified that an employer may value benefits provided under a multiemployer plan under the generally applicable valuation rules without regard to the special rule provided under the prior committee amendment. This provision would be effective as if it were enacted as part of section 89 in the Tax Reform Act of 1986.

The provision would clarify in legislative history that under present law the nondiscrimination tests that apply to dependent care assistance programs, other than the concentration test (sec. 129(d)(4)) and the benefits test (sec. 129(d)(8)), apply only to the availability of the program, not to the utilization of the program. This provision would be a clarification of present law retroactive to the addition of the relevant nondiscrimination tests.

2. Modification of section 403(b) nondiscrimination rules (sec. 711)

The Tax Reform Act of 1986 generally applied the qualified pension plan coverage and nondiscrimination rules to the nonelective and matching contributions or benefits of tax-sheltered annuity programs, generally effective for plan years beginning after December 31, 1988. The provision would modify these nondiscrimination rules in the following manner: (1) student employees who are not taken into account for employment tax purposes may be disregarded; (2) adjunct professors and other part-time employees could be disregarded if they normally work less than 20 hours per week; and (3) the nondiscrimination tests could be applied by testing at the level of the institution that maintains the plan, as long as the institution functions as, and has been historically recognized as, a separate employer. The provision also would clarify that the special rules applicable to multiple employer pension plans (sec. 413(c)) for purposes of determining whether certain rules are required to be satisfied on an employer-by-employer or on an aggregate basis are applicable to multiple employer tax-sheltered annuity programs. In addition, for plan years beginning before January 1, 1992, the nondiscrimination rules could be applied by testing with respect to a statistically valid sample of employees.

The provision would be effective as if included in the Tax Reform Act of 1986.

3. Provide that plans of police or firefighters are tested separately for purposes of the minimum participation rule (sec. 712)

Under present law, a pension plan is not a tax-qualified plan unless it benefits no fewer than the lesser of (1) 50 employees of the employer, or (2) 40 percent of all employees of the employer. Under the provision, a plan maintained by a governmental employer for police or firefighters, which is structured generally to take into account the early retirement ages of such employees, would satisfy the minimum participation rule if the plan satisfied the rule taking into account only the employees of the employer who are police or firefighters. Similarly, police or firefighters would not be taken into account in applying the minimum participation rule to coverage of employees of the employer who are not police or firefighters.

The provision would be effective as if included in the Tax Reform Act of 1986.

4. Gift tax treatment of joint and survivor annuities (sec. 713)

Under present law, a taxable gift occurs with respect to a joint and survivor annuity when the donor irrevocably designates a beneficiary. A gift of such an annuity to a spouse may not qualify for the marital deduction because the spouse's interest may terminate and pass to the donor without incurring transfer tax. Under the provision, the transfer to a spouse of an interest in a joint and survivor annuity in which no person other than a spouse has the right to receive any payments prior to the death of the last spouse to die would, unless otherwise elected, qualify for a marital deduction for Federal estate and gift tax purposes under the rules governing qualified terminable interest property.

The provision generally would be effective for decedents dying, and transfers made, after December 31, 1981.

5. Allow rural telephone cooperatives to establish section 401(k) plans (sec. 714)

Under present law, State and local governments and other tax-exempt organizations (other than rural electric cooperatives) may not maintain section 401(k) plans (cash or deferred arrangements). The provision would permit rural telephone cooperatives to maintain section 401(k) plans on the same basis as rural electric cooperatives, effective for years beginning after the date of enactment.

6. Employee leasing safe harbor rule (sec. 715)

Under present law, certain employees of a leasing organization are considered employees of the service recipient for purposes of certain pension and employee benefit rules. Under a safe harbor rule, a service recipient is not required to maintain records with respect to leased employees if, among other things, less than 5 percent of the recipient's workforce are leased employees (determined in a simplified manner). Under the provision, certain individuals would not be considered leased employees of a service recipient that would satisfy the 5-percent test if the percentage were raised from 5 percent to 10 percent. The exempted individuals would include any individual who (1) is credited with less than 3,000 hours of service for the service recipient over any two consecutive calendar years, and (2) did not perform services (as an employee or otherwise) for the service recipient within the same geographic area at any time within the calendar year immediately preceding the two-calendar-year period.

The provision would be effective as if included in the Tax Reform Act of 1986.

7. Limitations on contributions and benefits under qualified pension plans maintained by public employers (sec. 716)

Present law (sec. 415) provides overall limits on contributions and benefits under qualified pension plans maintained by any private or public employer or by related employers. Present law provides special rules applicable to a governmental pension plan and special rules applicable to benefits provided to police and firefighters. Under the provision, in the case of a plan maintained by a State or local government, the limitation on benefits under a defined benefit pension plan would be the greater of (1) the normal limit on benefits (sec. 415(b)) or (2) the accrued benefit of a participant determined without regard to any benefit increases adopted after October 14, 1987. The provision would only apply to individuals who are participants before January 1, 1990. In addition, to qualify for this special limitation, the employer maintaining the plan would be required to elect to satisfy the general requirements of section 415 without regard to the special rules for public plans (other than the special rules for police and firefighters). This election could be made indirectly through the modification of the plan maintained by governmental employers.

The provision would be effective with respect to years beginning after December 31, 1982, and the employer's election would be required by the close of the first plan year beginning after December 31, 1989.

8. Treatment of church self-insured death benefit plans as life insurance (sec. 717)

The definition of life insurance created as part of the Deficit Reduction Act of 1984 called into question the income tax exclusion for death benefits that some churches provide for their ministers and lay workers. Under the provision, the term life insurance generally includes certain church self-funded death benefit arrangements otherwise satisfying the definition of life insurance, even if the arrangements do not constitute life insurance under applicable State law.

The provision would be effective as if included in the Deficit Reduction Act of 1984.

9. Study of effects of minimum participation rule (sec. 718)

Under the Tax Reform Act of 1986, a qualified retirement plan must cover at least the lesser of (1) 50 employees, or (2) 40 percent of the employees of the employer (sec. 401(a)(26)). Federal law requires government contractors to provide certain employees specified retirement benefits or make a specified level of contributions to retirement plans. In some cases where these requirements apply, such as the construction industry, individuals change employers frequently. In order to provide the specified benefits and address the problem of frequent job changes, some employers have es-

tablished a multiple employer plan covering the affected employees, while maintaining other qualified retirement plans for employees not subject to the Federal requirements. The provision would require the Treasury Department to perform a study of the effects of the new minimum participation rule on arrangements of this type. The study should consider (1) the Federal requirements with respect to employee benefits for employees of government contractors, (2) whether a special minimum participation rule should apply to multiple employer plans where such Federal requirements apply, and (3) ways in which the plans of employers subject to such requirements could be modified to satisfy the minimum participation rule.

The study would be required to be completed by September 1, 1989.

10. Permit IRA acquisitions of State-issued coins (sec. 719)

Under present law, the acquisition by an individual retirement account (IRA) of any collectible is treated as a distribution from the IRA equal to the cost of the collectible and is includible in the IRA owner's income for the year in which the cost is deemed distributed. Under the Tax Reform Act of 1986, coins issued by the United States government are not treated as collectibles.

Under the provision, coins issued under the laws of any State would not be treated as collectibles for purposes of the IRA prohibition on investments in collectibles, as long as the coins are held by a person independent of the IRA owner. The provision would be effective for State coins acquired by an IRA after the date of enactment.

11. Age 70-1/2 required beginning date for qualified plan distributions (sec. 720)

The Tax Reform Act of 1986 provides that distribution of benefits under all qualified plans (secs. 401(a) and 403(a)), individual retirement arrangements (IRAs), tax-sheltered annuities and custodial accounts (sec. 403(b)), and eligible deferred compensation plans of State and local governments and tax-exempt employers (sec. 457 plans) is required to commence by April 1 of the calendar year following the calendar year in which the participant or owner attains age 70½, without regard to the actual date of separation from service. This required beginning date is effective with respect to years beginning after December 31, 1988, with a special effective date for collectively bargained plans. Prior to the Tax Reform Act of 1986, the required beginning date generally was the April 1 of the calendar year following the later of (1) the calendar year in which the participant or owner attains age 70½, or, in the case of an employer-maintained plan (2) the calendar year in which the participant retires.

Under the provision, there would be a one-year delay in the general effective date of the required beginning date under the Tax Reform Act for distributions from plans maintained by State or local governments, or tax-exempt organizations that are described in section 501(c)(3).

12. Application of funding rules to multiple employer plans (sec. 721)

Under present law, the minimum funding requirement with respect to a multiple employer plan and the maximum permissible deductible contribution to a multiple employer plan are calculated at the plan level.

The provision would provide that, for purposes of calculating the required or permissible contribution to a pension plan pursuant to the minimum funding rules and the full funding limitation, each employer participating in a multiple employer pension plan is deemed to be maintaining a separate plan. The assets and liabilities of each such plan are deemed to be those that would be transferred to a successor plan if the employer were to withdraw from the multiple employer plan, determined in accordance with section 414(l) and the terms governing the multiple employer plan.

The provision would be effective on the date of enactment, with respect to plans established after December 31, 1988. In the case of a multiple employer plan established on or before December 31, 1988, the plan administrator is permitted to elect to have the new rule apply to the plan. The election is required to be made on or before the last day of the first plan year beginning after the date of enactment and applies to the plan year during which the election is made and all subsequent plan years. The election may be revoked only with the consent of the Secretary.

13. Liability for withdrawal from a multiemployer plan in the case of an illegal strike (sec. 722)

Under present law, an employer may be liable to a multiemployer plan for withdrawal liability even though the withdrawal was the result of action by employee representatives rather than by the employer.

Under the provision, the Pension Benefit Guaranty Corporation (PBGC) would be required to study whether withdrawal liability should be triggered by an illegal strike or other illegal bargaining by an employee representative. The report to Congress pursuant to the study would be required to be issued by March 1, 1989. This provision would be effective on the date of enactment.

In addition, under the provision, and notwithstanding any other provision of law, certain withdrawal liability that has not been paid as of September 8, 1988, or that arises after such date would not be payable prior to January 1, 1990. The affected withdrawal liability is liability related directly or indirectly to striking or picketing in violation of the National Labor Relations Act, as determined by the National Labor Relations Board.

14. Study of employment tax treatment of certain technical services personnel (sec. 723)

Under present law, in general, the determination of whether an employer-employee relationship exists for Federal tax purposes is made under a common law test. Under this test, an employer-employee relationship generally exists if the person contracting for services has the right to control not only the result of the services, but also the means by which that result is accomplished. Section 530 of the Revenue Act of 1978 generally allows a taxpayer to treat a worker as not being an employee, regardless of the individual's actual status under the common law test, unless the taxpayer has no reasonable basis for such treatment. Section 1706 of the Tax Reform Act of 1986 provided that section 530 of the Revenue Act of 1978 does not apply in the case of an individual who, pursuant to an arrangement between the taxpayer and another person, provides services for such other person as an engineer, designer, drafter, computer programmer, systems analyst, or other similarly skilled worker engaged in a similar line of work.

Under the provision, the Treasury Department would be required to conduct a study of section 1706 and report to the House Committee on Ways and Means and the Senate Committee on Finance by September 1, 1989. The study is to include evaluation of the following issues: (1) the difficulty of administration of the provisions of section 1706; (2) whether there are any abuses in the reporting of income by independent contractors that justify the adoption of section 1706 (including any evidence of greater noncompliance with the tax laws by independent contractors as compared to employees); (3) the effect that section 1706 has had on the ability of technical services personnel to get work; (4) the administrability of the present-law standards for determining whether an individual is an employee or an independent contractor; and (5) the equity of providing rules that distinguish between independent contractors who work through brokers and those who do not. The provision would be effective on the date of enactment.

C. Exempt Organizations

1. Effective date for UBIT treatment of income from certain games of chance (sec. 724)

The Deficit Reduction Act of 1984 provided that the unrelated business income tax (UBIT) does not apply to income of a tax-exempt organization derived from conducting a game of chance in a State having a statute, in effect as of October 5, 1983, providing that only nonprofit organizations could conduct such activities; this provision applied to such income derived after June 30, 1981. However, the technical corrections title of the Tax Reform Act of 1986 specified that the only State law to which the 1984 Act provision was intended to apply was a particular North Dakota law. Accordingly, such income derived in other States that tax-exempt organizations had treated as not subject to UBIT pursuant to the 1984 Act was retroactively treated as taxable.

The provision would make the 1986 Act technical correction effective beginning October 22, 1986 (the date of enactment of the technical correction). As a result, the treatment of income derived by tax-exempt organizations from games of chance conducted prior to that date would be governed by the provision of the 1984 Act as originally enacted.

2. Purchasing of insurance by tax-exempt hospital service organizations (sec. 725)

Section 501(e) provides tax-exempt status for hospital service organizations operated solely to perform, on a centralized basis, one or more specifically enumerated services. The specifically enumerated services are: data processing, purchasing, warehousing, billing and collection, food, clinical, industrial engineering, laboratory, printing, communications, record center, and personnel services.

The provision would clarify that purchasing by a hospital service organization includes the acquisition, on a group basis, of insurance (such as malpractice and general liability insurance) for its hospital members. The provision would apply to such purchases made before, on, or after the date of enactment.

3. Exempt charitable relief cargo from harbor maintenance tax (sec. 726)

Under present law, the harbor maintenance tax is 0.04 percent of the value of the commercial cargo loaded or unloaded at a U.S. port. Under the provision, there would be an exemption from the harbor maintenance tax for cargo donated for humanitarian and development assistance overseas, where such cargo is owned or financed by a non-profit organization or cooperative and

where the Customs Service certifies that the cargo is, in fact, intended for donation overseas.

The provision would be effective on April 1, 1987 (the effective date of the tax).

4. Exemption from BATF distilled spirits occupational tax for certain persons receiving spirits tax-free for research purposes (sec. 727)

An annual occupational tax of $250 is imposed on persons dealing in specially denatured distilled spirits (and ethyl alcohol), including persons using these distilled spirits for research purposes. The provision would exempt from this occupational tax State and local government and section 501(c)(3) educational organizations that purchase 25 gallons or less of these spirits in the year for which tax otherwise would be due.

The provision would be effective on July 1, 1989.

5. Treatment of certain payments to colleges for right to purchase athletic tickets (sec. 728)

Pursuant to IRS guidelines, if a payment to or for a college (e.g., to the college's athletic scholarship program) entitles the payor to purchase seating at the college's athletic stadium, the payment is not deductible as a charitable contribution if such tickets would not have been readily available to the taxpayer without making the payment.

Under the provision, if a taxpayer makes a payment to or for a college that would be deductible as a charitable contribution but for the fact that the taxpayer thereby receives (directly or indirectly) the right to purchase seating in the college's athletic stadium, 80 percent of such payment would be treated as a charitable contribution, whether or not tickets would have been readily available to the taxpayer without making the payment. No amount paid for the actual purchase of tickets would be deductible as a charitable contribution; the provision would not apply if the taxpayer receives tickets or seating (rather than the right to purchase tickets) in return for the payment.

The provision would apply to amounts paid in taxable years beginning after December 31, 1983 (i.e., beginning with the year in which the original IRS ruling on this issue was published).

D. Administrative Provisions

1. Definition of manufacturing for retail excise tax on trucks (sec. 729)

A 12-percent excise tax is imposed on the first retail sale or use after manufacture, production, or importation of any heavy truck, tractor, or trailer. Extensive repairs on a truck or trailer after it has been in use for several years can trigger the tax because the repairs are considered to have resulted in manufacture of a new vehicle.

The provision clarifies that the criteria, related to three categories of repair operations, presently employed by the Treasury to determine whether manufacture of a new truck has occurred is consistent with the intent of the statute. The committee, however, wishes to emphasize that in cases of the third category, i.e., repair or manufacture that extends the useful life of a vehicle, a higher ratio of repair costs to the full retail price of a comparable new truck should be applied. Thus, a ratio of 75 percent is to be used as a safe harbor, but the IRS is to administer the criterion with caution so that ordinary repairs to a two or three year old vehicle are not treated as having extended its useful life. On the other hand, the provisions of Code section 4051(b) are to apply in the case of a vehicle that has been repaired. In applying this section, the IRS is to aggregate the costs of nonemergency repairs, modifications, or upgrades to a vehicle over any 6-month period, and to use the total cost of such repairs in determining whether the 75 percent test is met.

2. Certain tolerances permitted in determination of wine excise tax (sec. 730)

An excise tax ranging from $0.17 cents per wine gallon to $3.40 per wine gallon is imposed on wine. The applicable rate depends on the alcohol content of the beverage. The provision would authorize the Treasury Department to prescribe *de minimis* tolerances for the amount of wine contained in commercial containers. If the amount of wine in a container was within these tolerances, tax would not be collected for any excess wine actually in the container. (An identical rule currently applies to the beer excise tax.)

The provision would be effective on January 1, 1989.

3. Gasoline wholesalers permitted to claim refunds on behalf of certain exempt users (sec. 731)

The gasoline excise tax is imposed on removal of gasoline blend stocks from the refinery or bonded pipeline terminal. Exemptions from the tax generally are realized by means of refunds (or credits against other taxes) following tax-paid sales. Refiners and terminal operators (as taxpayers) are allowed to claim the refunds on behalf of many exempt users.

The provision would allow wholesale distributors (defined as under the diesel fuel tax provisions) to claim gasoline tax refunds for exempt users on the same basis as refiners and terminal operators may do under present law.

The provision would be effective after September 30, 1988.

4. Election to treat passive foreign investment company (PFIC) stock as stock in a qualified electing fund (sec. 732)

A taxpayer's gain from the sale of stock in a passive foreign investment company (PFIC) and certain income received from a PFIC are generally treated as if earned over the period that the stock was held by the taxpayer. An interest charge is imposed on any deferred taxes: that is, taxes attributable to income that is treated as earned in previous years. Under present law, income and gains with respect to PFIC stock are not subject to deferred tax and interest rules if the PFIC has elected to be treated as a qualified electing fund and certain other requirements are met.

Under the provision, the election to be subject to the qualified electing fund rules would be made at the U.S. shareholder level, on a shareholder by shareholder basis, rather than at the company level. The shareholder election would be available, however, only where the PFIC complied with appropriate requirements (as prescribed by regulation) to determine the income of the company and other information necessary to carry out the PFIC provisions.

The provision would be effective for taxable years beginning after December 31, 1986.

5. Election by parent to claim unearned income of dependent on return (sec. 733)

Under present law, the unearned income of a child under the age of 14 in excess of a specified amount is taxed to the child at the top marginal rate of his or her parents. A dependent child with any unearned income must file a tax return if his or her total income exceeds $500. Under the provision, a parent generally would be permitted to elect to include certain unearned income of a child under the age of 14 on the parent's income tax return if the income of the child is less than $5,000 and consists entirely of specified types of unearned income (interest, dividends, and Alaska Permanent Fund dividends). The election could not be made if estimated tax payments for the taxable year are made in the child's name and social security number.

The provision would be effective for taxable years beginning after December 31, 1988.

6. Change in due date of GAO trade study (sec. 734)

Section 8008 of the Omnibus Trade Act of 1988 requires the General Accounting Office (GAO) to complete a study of four aspects of the Small Business Innovation Research Program by December 31, 1988. The provision would give the GAO six additional months, until July 1, 1989, to complete this study.

7. Disclosure of return information to certain cities (sec. 735)

Present law provides that the IRS can disclose otherwise confidential tax returns and return information to local tax administrators of any city with a population in excess of 2 million that imposes an income (or wage) tax. The provision would apply this provision to cities that impose an income (or wage) tax with populations in excess of 250,000. The provision would be effective on the date of enactment.

8. Study of cigarette excise tax and effects of smoking on health care costs (sec. 736)

Excise taxes are imposed on cigars, cigarettes, cigarette paper and tubes, and on snuff and chewing tobacco. The excise tax on small cigarettes is 16 cents per pack of 20 cigarettes. Most taxable cigarettes are small cigarettes.

The provision would require an ongoing study by the Secretary of the Treasury Department, after consulting with the Surgeon General, of:

(1) The public and private health care costs incurred (with respect to smokers, their spouses, and others) as a result of cigarette smoking in the United States;

(2) The incidence of cigarette smoking in the U.S. by teenage and younger children; and

(3) The impact of the rate of the cigarette excise tax on smoking by adults and by teenage and younger children.

Reports of the results of the study would be required to be submitted every two years to the House Committee on Ways and Means and the Senate Committee on Finance, with the first such report to be submitted by January 1, 1989.

E. Tax-Exempt Bonds

1. Calculation of qualified mortgage bond purchase price limit for residences located on certain land subject to ground leases (sec. 737)

Residences financed with tax-exempt qualified mortgage bonds must have purchase prices of 90 percent or less of the average area purchase price, determined including the acquisition cost of land. The value of land held subject to a ground lease is determined by capitalizing the value of the lease payments, discounted by the yield on the underlying tax-exempt bonds.

The provision would direct the Treasury Department to amend its regulations to provide a method of determining a capitalized

value for ground leases where the lease term has at least 35 years remaining and the rent is known for at least the first 10 years of the remaining term, but not the entire term.

The provision would be effective on the date of the bill's enactment, for bonds issued after the date of the bill's enactment.

2. Application of the security interest test to bond financing of hazardous waste clean-up funds

State and local governments may issue tax-exempt bonds to finance governmental activities, but may issue tax-exempt private activity bonds only for specified purposes. Several States are considering issuance of tax-exempt bonds to finance hazardous waste clean-up activities. Present law is unclear as to when these bonds are governmental bonds if the proceeds are used to finance activities on private property and if reimbursement may be sought from private parties. The provision would direct the Treasury Department to issue guidance concerning the application of the private activity bond test to tax-exempt bond financing for State programs. The guidance would be provided before January 1, 1989.

3. Calculation of income limits for qualified mortgage bond financed homes in high housing cost areas (sec. 738)

Purchasers of houses financed with tax-exempt qualified mortgage bonds must have incomes of 115 percent or less of the higher of area or State median income in statistical areas other than targeted areas of economic distress.

The provision would provide a third alternative for establishing the income limit in high housing cost areas. In these areas, this alternative would adjust the income limit upward from 115 percent of area median income by one percent for each percent that the ratio of local housing cost to income exceeds 120 percent of the same ratio determined nationally. The maximum adjusted income limit would be 140 percent of area median income.

The provision would apply to bonds issued after December 31, 1988.

4. Tax-exempt financing for certain high-speed rail facilities (sec. 739)

Exempt-facility bonds are tax-exempt bonds issued to finance airports, docks and wharves, mass commuting facilities, and sewage facilities among other facilities. With the exception of bonds for airports and docks and wharves, exempt-facility bonds are subject to State private activity volume limitations.

The provision would create a new category of exempt-facility bonds: bonds to finance intercity high-speed rail facilities. These bonds would receive treatment similar to that currently accorded to bonds issued for airports. The proceeds of such bonds could be used to finance the construction or purchase of terminal facilities, roadbed, rails or other fixed guideway, and any necessary right of way. The proceeds could not be used to purchase rolling stock or other facilities for which tax-exempt bonds are prohibited for airports, ports, and mass commuting facilities.

To qualify as a high-speed rail facility it would have to be reasonably expected that trains carrying passengers on the financed property will be able to operate at average speeds in excess of 150 miles per hour between scheduled stops. The provision defines a high-speed rail facility to include high-speed ground transportation systems which employ magnetic levitation technology. Twenty-five percent of the bonds issued must receive State private activity volume cap allocation. Also, high-speed rail facilities need not be governmentally owned, but any private owner would have to make an irrevocable election not to claim depreciation or any tax credit with respect to the bond financed property. In addition, any proceeds not spent within three years of the date of issue would have to be used to redeem outstanding bonds.

The provision would be effective for bonds issued after the date of the bill's enactment.

5. Application of arbitrage rebate requirement to bona fide debt service funds (sec. 740)

Issuers of tax-exempt bonds are required to rebate to the Federal Government arbitrage earnings on investments unrelated to the purpose of the borrowing. At the election of the issuer, no rebate is required with respect to arbitrage earnings on certain small current debt service funds (i.e., funds where gross earnings are less than $100,000).

The provision would eliminate the $100,000 earnings limit for fixed-rate governmental bonds having a weighted average maturity of five years or more. Additionally, the present-law elective provision for small current debt service funds would be made mandatory.

The provision would apply to bonds issued after the date of the bill's enactment. Issuers of outstanding governmental fixed rate bonds would be allowed a one-time election to apply the new rule in the provision to amounts deposited after the date of the bill's enactment in bona fide debt service funds issued after August 31, 1986.

F. Miscellaneous Provisions

1. Net operating loss rules for bankruptcy: certain ownership changes not counted (sec. 741)

The net operating loss limitations of the 1986 Act do not apply to an ownership change resulting from certain bankruptcy reorganizations or proceedings if a petition in the case was filed with a court before August 14, 1986. When stock of a corporation is acquired during the pendency of a bankruptcy, an ownership change may occur and losses may be limited. Under the provision, under regulations to be prescribed by the Treasury, if any stock that was acquired by shareholders during the proceeding in a transaction that triggered an ownership change does not in fact represent more than 50 percent of the value of the corporation (based on the value of the stock immediately after the completion of the bankruptcy proceeding), an amended return could generally be filed with respect to prior years for which losses were limited (without regard to the otherwise applicable statute of limitations).

The provision would be effective as if included in the Tax Reform Act of 1986.

2. Reserves for losses on loans of banks: Exception for small banks (sec. 742)

Under present law, a large bank is not allowed a deduction for an addition to a reserve for bad debts. A bank is a large bank if for the taxable year, or any preceding taxable year beginning after December 31, 1986, the bank (or the parent-subsidiary controlled group of which it was a member) exceeds a certain size. The provision would provide that, if a bank which is a member of an affiliated group is sold to persons who did not, directly or indirectly, own any interest in any member of the affiliated group, the determination of whether a bank is a large bank for this purpose would be made without regard to the size of the bank before such sale.

The provision would be effective as if included in the Tax Reform Act of 1986.

3. Personal holding company income: Application to broker-dealers (sec. 743)

Under present law, personal holding company income of a broker-dealer includes interest income. The provision would exclude from the definition of personal holding company income interest received by broker-dealers with respect to: (1) any securities or money market instruments held as inventory; (2) margin accounts; or (3) any financing for a customer secured by securities or money market instruments.

The provision would be effective with respect to interest received after the date of enactment of the Act.

4. Foreign currency transactions (sec. 744)

Under present law, uniform residence-based sourcing and ordinary income and loss characterization rules apply to certain gains and losses on foreign currency-related forward contracts, futures contracts, options, and similar financial instruments, unless those instruments are marked to market under section 1256 at year-end. At the taxpayer's election, gain or loss on a forward, futures, or option which is a capital asset in the hands of the taxpayer, is not part of a straddle, and is identified by the taxpayer before the close of the day on which it is entered into, is capital, and not ordinary.

Under the provision, foreign currency gains and losses from transactions in forwards, futures, options, and similar financial instruments would be sourced on the basis of the taxpayer's residence, and unless the capital gain election were applicable, would be treated as ordinary income, without regard to whether the instruments are or would be marked to market under section 1256 if held at year end. The provision would relax the identification and anti-straddle conditions on making the capital gain election in the case of certain traders.

The provision would be effective for transactions acquired or entered into after September 8, 1988.

5. Dual resident companies (sec. 745)

Prior to the 1986 Act, certain U.S. corporations subject to income tax in a foreign country on their income without regard to its source or on a residence basis (so-called "dual resident companies") could consolidate with one set of affiliates in the United States and another set in a foreign country simultaneously. In these cases, a dual resident company with a net loss could use that loss to reduce the taxes on two separate streams of income.

The 1986 Act prevents the double use of losses that prior law allowed. Thus, a loss of a dual resident company may in some cases be used to reduce the taxes on income of other members of its foreign affiliated group, but not of its U.S. affiliated group. Under U.S. and U.K. law, however, there are cases in which the loss of a dual resident company with U.K. residence may not be used to offset the income of any other affiliate, U.S. or foreign. In order to restore the use of its losses in the United Kingdom, such a company must reorganize as a U.K. corporation. However, such a reorganization may be a taxable event if the U.S. parent of the dual resident company has an "excess loss account" with respect to the stock of the dual resident company. An excess loss account is created in the stock of a U.S. corporation when losses derived by, and distributions from, that U.S. corporation are in excess of its parent's basis in its stock.

Under the provision, a U.S. corporation with respect to whose stock there is an excess loss account which arose prior to January 1, 1988 and while the corporation was a dual resident company would be allowed to reorganize as a new foreign corporation without triggering the potential tax associated with the excess loss account. Instead, the excess loss account would be suspended until the stock in the new foreign corporation is disposed of outside of the affiliated group. In addition, rules would be provided so that the new foreign corporation's income is subject to full U.S. tax jurisdiction until the excess loss account is reduced to zero or is recaptured.

The provision would be effective for transactions occurring after date of enactment.

6. Controlled foreign corporations: chain deficit rule (sec. 746)

Under present law, deficits generated by a controlled foreign corporation cannot reduce the subpart F income of any other controlled foreign corporation. S. 2238 as reported by the committee contains a "chain deficit rule" under which deficits would be so usable in limited circumstances. This treatment would not be available for deficits attributable to categories of business activities the income from which is not subject to current tax under Subpart F, or for deficits from categories of business activities that are not carried on by the corporation whose subpart F income is sought to be reduced by the chain member's deficit. Insurance income is subject to current tax under subpart F unless it is attributable to the insurance of risks in the same country in which the corporation is organized. Under S. 2238, subpart F income of one controlled foreign corporation remains ineligible for reduction by insurance deficits of a related controlled foreign corporation if either corporation is not a "qualified insurance company."

Under the provision, a per-country election would be available to treat same-country insurance income as subpart F income eligible for reduction under the deficit rules of subpart F. The deficit rules of subpart F would be applied by characterizing certain investment income as if it were derived by a qualified insurance company. The provision would be effective as if included in the 1986 Act.

7. Qualified possession source investment income (sec. 747)

Under present law, a possession tax credit is available on qualified possession source investment income (QPSII) of certain electing domestic corporations engaged in a trade or business in Puerto Rico or the U.S. Virgin Islands. In order to be QPSII, investment income generally must be, among other things, attributable to investment in a possession where a trade or business is conducted, for use in that possession.

Under the 1986 Act, investments in certain financial intermediaries are treated as investments for use in Puerto Rico if the intermediary makes appropriate investments in qualified Caribbean Basin countries. Qualified Caribbean Basin countries are those "beneficiary countries" under the Caribbean Basin Economic Recovery Act that have entered into tax information exchange agreements with the United States and whose tax laws have not been found by the Treasury to discriminate against conventions held in the United States. The U.S. Virgin Islands do not constitute a beneficiary country under the Caribbean Basin Economic Recovery Act.

Under the provision, the U.S. Virgin Islands would be treated as a qualified Caribbean Basin country for purposes of determining whether investments in financial intermediaries give rise to QPSII. The provision would be effective for investments made after date of enactment.

8. Treatment of foreign branch as controlled foreign corporation (sec. 748)

Subject to exceptions, income earned by a U.S.-controlled foreign corporation is not taxed by the United States until that income is distributed to the U.S. persons owning the stock of the foreign corporation. Under present law, such deferral of current U.S. tax is not available for insurance income derived by U.S.-controlled foreign corporations, except in the case of underwriting income attributable to risks of property or activities in, or the lives or health of residents of, the country in which the controlled foreign corporation is organized.

Under the provision, a qualified insurance branch of a controlled foreign corporation would be treated as a separate corporation for purposes of applying the same-country exception to insurance income derived by controlled foreign corporations. Rules would be provided to treat remittances by the branch to its head office as a dividend for purposes of imposing current U.S. tax on the remitted earnings. The provision would be effective for taxable years of foreign corporations beginning after December 31, 1988.

9. Banks organized in possessions (sec. 749)

Under present law, certain non-Guamanian possession banks are subject to net-basis U.S. income tax and to branch level taxes with respect to interest from U.S. government obligations, regardless of whether such banks have an actual trade or business in the United States. By contrast, other foreign banks without U.S. trades or businesses are generally not subject to U.S. tax on interest from U.S. government obligations.

Under the provision, effective for taxable years beginning after December 31, 1988, possession banks would not be subject to net-basis U.S. tax on U.S. government interest they receive, and possession banks would not be subject to branch level taxes on earnings that arise from, and interest expense that is allocated against, interest income from U.S. obligations derived by those banks (unless those banks are engaged in a U.S. trade or business and the interest is actually effectively connected therewith).

10. Carryover of nonconventional fuels credit under minimum tax (sec. 750)

Under present law, the nonconventional fuels credit (sec. 29) may not reduce the taxpayer's net income tax to less than the amount of the minimum tax. Carryovers of unused credits are not allowed. Under the provision, the minimum tax credit allowable in future years against the regular tax will be increased by the amount of the nonconventional fuels credit not allowed for the taxable year solely by reason of the limitation based on the taxpayer's minimum tax liability.

The provision would apply to taxable years beginning after December 31, 1986.

11. One-year extension of placed in service rule for nonconventional fuels production credit (sec. 751)

Qualified fuels are eligible for the production credit for nonconventional fuels, if the fuel is produced from a well drilled after December 31, and before January 1, 1990, or produced from a facility placed in service after December 31, 1979, and before January 1, 1990.

The provision would be amended to extend eligibility for the production credit to qualified fuels that are produced from a facility placed in service or a well drilled before January 1, 1991.

12. Exception from distilled spirits occupational tax for certain small plants producing exclusively for fuel uses (sec. 752)

An annual occupational tax of $1,000 per premise is imposed on each proprietor of a distilled spirits plant. The tax is $500 per year for businesses with gross receipts of less than $500,000 in the preceding taxable year (taxable year is July 1-June 30 for the occupational tax).

The provision would exempt from the annual distilled spirits producer occupational tax plants which (1) produce distilled spirits exclusively for fuel use and (2) produce no more than 10,000 proof gallons per year.

The provision would be effective on July 1, 1989.

13. Treatment of certain pledged installment obligations (sec. 753)

Under present law, if any indebtedness is secured directly by an installn.ent obligation that arises out of the sale of non-farm real property that is used in a taxpayer's trade or business or that is held for the production of rental income where the selling price of the real property exceeds $150,000 (a "nondealer real property installment obligation"), the net proceeds of the secured indebtedness are treated as a payment on the installment obligation. This rule generally applies to nondealer real property installment obligations that are pledged as security for a loan after December 17, 1987.

Under the provision, the refinancing of an indebtedness that was outstanding on December 17, 1987, and that was secured by a nondealer real property installment obligation on such date is to be treated as a continuation of the indebtedness and, consequently, will not result in a deemed payment with respect to the installment obligation if (1) the taxpayer is required by the creditor to refinance the loan, and (2) the refinancing is provided by a person other than the creditor or a person related to the creditor. This exception to the deemed payment rule would not apply to the extent that the principal amount of the indebtedness resulting from the refinancing exceeds the principal amount of the refinanced indebtedness immediately before the refinancing. In addition, if the term of the indebtedness resulting from the refinancing exceeds the term of the refinanced indebtedness, upon the expiration of the term of the refinanced indebtedness, the outstanding balance of the indebtedness resulting from the refinancing is to be treated as a deemed payment with respect to the installment obligation.

14. Treatment of stock held in trust in determining whether certain corporations may use the cash method of accounting (sec. 754)

Under present law, qualified personal service corporations are excepted from the general rule denying the use of the cash method of accounting to a C corporation or a partnership with a C corporation as a partner. A qualified personal service corporation is a corporation that satisfies both a function test and an ownership test. The ownership test is satisfied if substantially all (i.e., 95 percent or more) of the value of the outstanding stock is owned, directly or indirectly, by certain employees, certain retired employees, the estates of such employ-

ees or retired employees, and other persons who acquire stock in the corporation by reason of the death of such employees or retired employees.

The provision would require the Treasury Department to issue regulations that provide to what extent stock owned by nongrantor trusts is to be treated as indirectly owned by the beneficiaries of the trust for purposes of the ownership test.

The provision would be effective as if included in the Tax Reform Act of 1986.

15. Above-the-line deduction for jury pay that employee must surrender to employer (sec. 755)

Under present law, unreimbursed employee business expenses generally are allowed only as itemized deductions. Also, the total of all miscellaneous itemized deductions, including such unreimbursed employee business expenses, is deductible only to the extent exceeding two percent of the taxpayer's adjusted gross income. If an employer requires its employees to surrender to the employer amounts received as jury pay, in return for continuing the employee's normal salary while on jury service, the amount of surrendered jury pay is deductible only by itemizers, and only to the extent exceeding the two-percent floor.

The provision would provide an above-the-line deduction for jury pay surrendered to the employer as described above. Thus, the deduction would be available to both itemizers and nonitemizers, and would not be subject to the two-percent floor.

The provision would be effective for taxable years beginning after December 31, 1986 (the effective date of the 1986 Act provisions relating to employee business expenses).

16. Minimum tax treatment of structured settlement arrangements (sec. 756)

Under present law, the income earned on annuity contracts that are qualified funding assets under structured settlement arrangements is included in the adjusted current earnings of a corporation, under the corporate alternative minimum tax. Under the provision, an exclusion from the adjusted current earnings of a corporation would be provided for income on annuity contracts that are qualified funding assets (without regard to whether there is a qualified assignment).

The provision would be effective for taxable years beginning after December 31, 1989.

17. Repeal of general creditor requirement for certain personal injury liability assignments (sec. 757)

Under present law, an exclusion from gross income is provided for amounts received for agreeing to a qualified assignment to the extent that the amount received does not exceed the aggregate cost of any qualified funding asset. The terms of the liability assignment are required to satisfy certain qualifications, for the assignment to be a qualified assignment. The qualifications include, among others, the requirement that the assignee does not provide to the recipient of the periodic payments under the liability assignment any rights against the assignee which are greater than those of a general creditor.

Under the provision, a liability assignment is treated as a qualified assignment notwithstanding that the recipient is provided creditor's rights against the assignee greater than those of a general creditor. The provision provides that no amount is currently includible in the recipient's income solely because the recipient is provided creditor's rights that are greater than the rights of a general creditor.

The provision would be effective for liability assignments after the date of enactment.

18. Phase-in of property and casualty insurance company discounting rules for certain hospital insurers (sec. 758)

Present law limits the deduction for unpaid losses of property and casualty insurance companies to the amount of discounted unpaid losses. The amount of discounted unpaid losses is determined by applying a discount factor, which is calculated on a line of business basis by applying a historical loss payment pattern for the line of business and the applicable interest rate. The applicable interest rate is 100 percent of the average of the applicable Federal mid-term rates effective as of the beginning of each of the calendar months in the most recent 60-month period. The discounting rules are effective for taxable years beginning after December 31, 1986, with a fresh start transition rule.

The provision provides an elective phase-in of the discounting rules for taxable years beginning in 1987 and 1988 for qualified nonprofit hospital insurers. A qualified nonprofit hospital insurer is any domestic insurance company other than a life insurance company if, for the taxable year for which an election is in effect, (1) at least 75 percent of the value and voting power of the company is owned by nonprofit health care facilities or trade associations of such facilities, (2) a majority of the insurance or reinsurance provided by the company covers risks of nonprofit health care facilities, and (3) at least 75 percent of the insurance provided by the company is medical malpractice or general liability insurance.

Under the phase-in, the amount of the discounted unpaid losses of an electing company is to be increased by 20 percent of the amount of the discount for a taxable year beginning in 1987. For a taxable year beginning in 1988, the amount of the discounted unpaid losses of an electing company is to be increased by 10 percent of the amount of the discount. The fresh start and reserve strengthening provisions contained in the Tax Reform Act of 1986 apply for each taxable year of an electing company beginning in 1987, 1988, and 1989.

19. Cost of living allowances for judicial branch employees (sec. 759)

Under present law, civilian officers or employees of the U.S. government stationed outside the contiguous 48 states and the District of Columbia can exclude from gross income cost-of-living allowances received in accordance with regulations approved by the President. Cost-of-living allowances paid to federal court employees of the U.S. government (after October 12, 1987) are not received under regulations approved by the President and are not excludable from gross income.

Under the provision, judicial branch employees stationed outside the contiguous 48 states and the District of Columbia would exclude from gross income cost-of-living allowances received after October 12, 1987, if they were received either under regulations approved by the President or under certain other approved pay scales or salary plans.

20. Business use of automobiles by rural letter carriers (sec. 760)

An employee of the U.S. Postal Service could compute his or her deduction for business use of an automobile in performing services involving the collection and delivery of mail on a rural route by using, for all business use mileage, 150 percent of the standard mileage rate applicable to the first 15,000 miles of business use of an automobile that is not fully depreciated. However, this computation method could not be used if the taxpayer claimed depreciation deductions for the automobile for any taxable year beginning after December 31, 1987.

The provision would apply to taxable years beginning after December 31, 1987.

21. Medical expense deduction for costs of service animals to assist handicapped individuals

IRS rulings specifically provide that amounts paid to acquire, train, and maintain a dog for the purpose of assisting a blind or deaf taxpayer or dependent are eligible for the itemized deduction for medical expenses (Rev. Rul. 55-261, 1955-1 C.B. 307; Rev. Rul. 68-295, 1968-1 C.B. 92). The legislative history of the bill would clarify that under present law, similar costs incurred with respect to a dog or other service animal in order to assist individuals with other physical disabilities similarly would be eligible for the medical expense deduction.

22. Retroactive application of IRS change of position relative to employer pickups of retirement contributions

The 1983 Social Security Amendments provided that the payment by a State and local employer of employee contributions under a State or local retirement plan would be treated as wages subject to social security tax. The Deficit Reduction Action of 1984 modified this provision to allow the exclusion from wages for social security tax purposes of any such "pickups" by the employer of employee contributions unless the pickups were made pursuant to a salary reduction agreement. On the basis of this 1984 change in the legislation, some States undertook to implement pickups of this type after obtaining letter rulings from the Internal Revenue Service to the effect that the pickups would not be considered as wages. A subsequent review of the issue, in the light of statement of managers language in the conference report on the 1984 Act, led the Internal Revenue Service to reverse its position and to revoke the earlier letter rulings. In revoking the earlier letter rulings, the Service indicated that the States affected could apply for relief from liability for FICA taxes on the pickups with respect to the retroactive period prior to the issuance of the letter ruling.

The provision would relieve States from FICA liability for employer pickups subsequent to the effective date of the 1984 amendments to the extent that the State did not pay the FICA taxes in good faith reliance on a letter ruling of the Internal Revenue Service. The relief would apply only to pickups for which taxes were not paid and only for the period ending with the earlier of the date of enactment of this provision or the receipt by the State from the Internal Revenue Service of a notice of revocation of the letter ruling.

23. Limitation on CBI ethanol imports

Section 1910 of the Omnibus Trade Act of 1988 permits five companies to import 20 million gallons apiece of ethanol that does not meet the rules of origin of the Caribbean Basin Economic Recovery Act, as amended, in that the ethanol dehydrated in those plants is not fermented from vegetable matter grown in the region at plants located in the region.

The provision would bar the application of the provisions of the Trade Act after the enactment of this bill until the Secretaries

of Agriculture, Energy, and the Treasury acting jointly certify that the domestic ethanol industry is not fully meeting domestic demand for ethyl alcohol and that imported ethanol is necessary to maintain adequate supplies for consumers.

IV. EXTENSION OF EXPIRING TAX PROVISIONS AND OTHER SUBSTANTIVE PROVISIONS

A. Taxpayer Bill of Rights (Secs. 763-785) [2]

(1) *Disclosure of rights of taxpayers*

Under present law, there is no statutory requirement that the IRS provide a written explanation of the rights of the taxpayer and the obligations of the IRS during the tax dispute resolution process. The provision would require the IRS, when it contacts a taxpayer concerning the determination or collection of any tax, to provide a written explanation of the rights of the taxpayer and the obligations of the IRS during the audit, appeals, refund, and collection processes. The IRS would be required to prepare the written explanation not later than 180 days after enactment.

(2) *Procedures involving taxpayer interviews*

Under present law, the IRS is required to select a reasonable time and place for an examination of a taxpayer (but no regulations have been promulgated elaborating on this provision), and there is no statutory provision governing audio recordings of IRS interviews. The provision would require the IRS to publish within one year of enactment regulations enumerating standards for determining whether the selection of a time and place for interviewing a taxpayer is reasonable. Prior to initial audit or collection interviews, IRS employees would be required to explain the audit or collection process and taxpayers' rights under that process. A taxpayer would be permitted, upon advance notice to the IRS, to make an audio recording of any in-person interview at the taxpayer's own expense. Taxpayers also would be permitted to be represented during an interview by any attorney, certified public accountant, enrolled agent, enrolled actuary, or any other person currently permitted to represent the taxpayer before the IRS. If a taxpayer clearly states during an interview that he or she wishes to consult with a representative, the interview would have to be suspended to afford the taxpayer a reasonable opportunity to consult with the representative. Absent an administrative summons, a taxpayer could not be required to accompany the representative to an interview. The provision would apply to interviews conducted on or after 30 days after enactment.

(3) *Taxpayers may rely on written advice of the IRS*

Under present law, the IRS may abate administratively some penalties. The provision would require the IRS to abate any portion of any penalty that is attributable to erroneous written advice furnished by the IRS to a taxpayer, where such advice was specifically requested in writing by the taxpayer and reasonably relied upon, unless the taxpayer failed to provide adequate or accurate information when requesting the advice. The provision would be effective for advice requested on or after enactment.

(4) *Taxpayer assistance orders*

The Taxpayer Ombudsman administers the IRS Problem Resolution Program, which is designed to resolve a wide range of tax administration problems that are not remedied through normal operating procedures or administrative channels. The provision would provide the Taxpayer Ombudsman with statutory authority to issue a taxpayer assistance order (e.g., requiring release from levy of property of the taxpayer) if, in the determination of the Ombudsman, the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the IRS is administering the internal revenue laws. The provision would be effective upon enactment.

(5) *Office of Inspector General*

The Treasury Department has a nonstatutory Inspector General with internal audit and investigative responsibilities for the Department, except for its four law enforcement agencies: IRS, Secret Service, Customs Service, and the Bureau of Alcohol, Tobacco, and Firearms. These functions are performed at the IRS by the Inspection Division, which reports directly to the IRS Commissioner. The provision would establish a statutory Inspector General within the IRS. It would in addition establish a separate statutory Inspector General within the Treasury Department (with oversight responsibility over all other agencies within the Department). The provision would be effective upon enactment. (The provision was passed by the Senate on February 2, 1988, as part of S. 908, The Inspector General Act Amendments of 1988. The House of Representatives passed a modified version of this legislation on July 26, 1988.)

(6) *Basis for evaluation of IRS employees*

The IRS Manual prohibits the use of production quotas or goals based upon sums collected to evaluate IRS enforcement officers, appeals officers, and reviewers. The provision would statutorily prohibit the IRS from using records of tax enforcement results to evaluate enforcement officers, appeals officers, and reviewers or to impose or suggest production quotas or goals. The provision would be effective for evaluations conducted on or after enactment.

(7) *Procedures relating to IRS regulations*

Under present law, the IRS publishes all regulations in the Federal Register. Before final regulations are promulgated, proposed regulations are issued and comments are invited from the public and Government agencies. The IRS also issues some regulations as temporary regulations, which generally are effective upon publication and remain in effect until replaced by final regulations. The provision would require the IRS to solicit comments from the Small Business Administration (SBA) after the publication of proposed regulations or before the promulgation of final regulations. The SBA would be allowed four weeks to provide its comments on the impact of the regulations on small businesses. Each time the IRS issued temporary regulations, it would be required to simultaneously issue those regulations in proposed form. Temporary regulations would be permitted to remain in effect for no more than two years after issuance. The provision would be effective for regulations issued after enactment.

(8) *Explanation of tax liability and penalties*

The IRS currently is not required to explain the basis for assessing penalties. The provision would require that all tax due notices or deficiency notices contain both a description of the basis for, and an identification of the amounts (if any) of, tax due, interest, and penalties. The provision would apply to mailings made after 180 days after enactment.

(9) *Installment payment of tax liability*

Under present law, the IRS is not required to enter into installment payment agreements with taxpayers, but generally does so if a taxpayer who is unable to pay the delinquency in full is able to make payments on the delinquent taxes and pay current taxes as they become due. The provision would grant the IRS statutory authority to enter into a written installment payment agreement if the IRS determines that an agreement will facilitate collection of tax owed. The IRS would have authority to modify or terminate an installment payment agreement if the IRS determines that the financial condition of the taxpayer has significantly changed and if notice is given to the taxpayer at least 30 days prior to the date of action. The provision would apply to installment agreements entered into after enactment.

(10) *Assistant Commissioner for Taxpayer Services*

There is currently within the IRS an Assistant Commissioner (Taxpayer Services and Returns Processing). This position is not provided by statute. The provision would establish an Assistant Commissioner for Taxpayer Services who, jointly with the Taxpayer Ombudsman, would be required to report annually to Congress concerning the quality of taxpayer services provided by the IRS. The provision would be effective upon enactment.

(11) *Levy and distraint*

Notice to taxpayers.—Present law provides that, at least 10 days before collecting a tax by levy, the IRS must provide the taxpayer written notice of its intent to levy. If the IRS finds that collection of tax is in jeopardy, it may collect the tax by levy without providing notice or waiting 10 days. The provision would extend the 10-day notice and waiting period to 30 days. As under present law, the notice and waiting period requirements would not apply if the collection of tax is in jeopardy.

Property subject to levy.—Property subject to levy includes any property belonging to the taxpayer, except property specifically excluded, which includes (1) fuel, provisions, furniture, and personal household effects, not exceeding $1,500 in aggregate value; and (2) books and tools necessary for the trade, business, or profession of the taxpayer, not exceeding $1,000 in aggregate value. The provision would index for inflation through 1990 the dollar value of both of these exclusions. The provision also would exempt from levy a taxpayer's principal residence and tangible personal property essential to the taxpayer's trade or business, unless an IRS district director or assistant director personally approves the levy in writing or the collection of tax is found to be in jeopardy. The provision also would prohibit levies in cases where the estimated expenses of levy and sale exceed the fair market value of the property.

Levy on wages.—Present law provides that the IRS may instruct the taxpayer's employer to pay directly to the IRS wages payable to the taxpayer, except (1) wages necessary to comply with a prior judgment of a court for support of minor children, and (2) a minimum amount of wages or other

[2] These provisions are modifications to S. 2223 as reported by the Finance Committee. The Finance Committee held markup sessions on the Taxpayer Bill of Rights (S. 2223) on March 18 and 21, 1988, and reported the bill on March 29, 1988 (S. Rept. 100-309).

income (in general, $75 per week plus $25 per week for each dependent). The provision would increase the amount of wages exempt from levy for each week to an amount equal to the taxpayer's standard deduction and personal exemptions allowable for the taxable year in which the levy occurs, divided by 52.

Release of levy.—The IRS currently has authority to release a levy if it determines that this will facilitate the collection of tax. The provision would require the IRS to release a levy on property if (1) the liability for which the levy was made is satisfied, (2) the IRS determines that release will facilitate the collection of the liability, (3) an installment payment agreement has been executed with respect to such liability, (4) the IRS has determined that the levy is creating an economic hardship due to the taxpayer's financial condition, or (5) the fair market value of the property exceeds the liability and partial release would not hinder collection of the tax and related costs owed to the IRS. The provision would be effective for levies issued more than 90 days after enactment.

(12) *Review of jeopardy levy and assessment procedures*

Present law provides special rules relating to administrative review and judicial review (by Federal district courts) of jeopardy assessments. These rules do not apply to jeopardy levies. The provision would extend the existing rules relating to review of jeopardy assessments to review of jeopardy levies. The Tax Court would be provided jurisdiction concurrent with Federal district courts with respect to the challenges to a jeopardy assessment or jeopardy levy if the taxpayer has filed a petition with the Tax Court prior to the making of the assessment or levy with respect to any deficiency covered by the jeopardy assessment or jeopardy levy notice. The provision would apply to jeopardy levies issued and jeopardy assessments made after enactment.

(13) *Administrative appeal of liens*

Under present law, although a taxpayer can obtain a review within the IRS of an initial determination of tax deficiency, there is no statutory procedure for the administrative appeal of IRS decisions concerning the collection of a tax liability. The provision would require the IRS to promulgate regulations within 180 days after enactment that provide taxpayers with an administrative procedure to obtain review of the filing of a notice of lien in the public record and an opportunity to petition for the release of such lien.

(14) *Awarding of costs and certain fees in administrative and civil actions*

Recoverable costs.—Under present law, any person who is a prevailing party in a tax case in any Federal court may be awarded reasonable litigation costs if the position of the United States was not substantially justified, but costs incurred during the IRS administrative process generally are not recoverable. The provision would provide that any person who substantially prevails in any tax case brought by or against the United States may be awarded reasonable litigation costs incurred in connection with any court proceeding and reasonable administrative costs incurred before the IRS, but only if such administrative costs were incurred after the earlier of (1) the date of the first notice of proposed deficiency that allows the person an opportunity for administrative review in the IRS Office of Appeals, or (2) the date of the notice of deficiency described in section 6212 of the Code.

Burden of proof.—Under present law, in order to obtain reasonable litigation costs, the taxpayer must establish that the position of the United States in the case was not substantially justified. The provision would shift the burden of proof to the Government to establish that its position was substantially justified in order to prevent a prevailing taxpayer from recovering costs.

Position of the United States.—Under present law, in determining whether the position of the United States was substantially justified, the position is determined beginning with the position in the civil proceeding, or, if applicable, the position taken by the IRS district counsel administratively. This generally does not include positions taken in the audit or appeals process. The provision would provide that in determining whether the position of the United States was substantially justified, the position of the United States is any position taken after the later of (1) the date of the first letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the IRS Appeals Office, or (2) the date by which the relevant evidence under the control of the taxpayer, as well as relevant legal arguments, with respect to such action have been presented by the taxpayer to IRS examination or Service Center personnel.

Administrative settlement of claims for litigation costs.—The Code presently does not provide explicit authority to the IRS to settle administratively claims for litigation costs prior to the commencement of the civil action. The provision would provide the IRS with authority to settle claims for administrative costs and litigation costs. The provision would apply to actions commenced after enactment.

(15) *Civil cause of action for damages due to failure to release lien*

Under present law, the Code does not grant taxpayers a right to bring an action for damages resulting from the wrongful failure to remove a lien on a taxpayer's property. The provision would grant taxpayers the right to sue the Federal Government in Federal district court or Tax Court if any IRS employee knowingly or negligently fails to release a lien on the taxpayer's property as required under the Code. Taxpayers would be permitted to recover the costs of the action and damages equal to the greater of (1) the actual direct economic damages sustained by the taxpayer which, but for the actions of the IRS, would not have been sustained, or (2) $100 per day (up to $1000) for each day the failure continues during the period that begins ten days after the taxpayer provides written notice to the IRS of the failure to release the lien. The provision would apply to taxpayer notices provided and damages arising after enactment.

(16) *Civil cause of action for damages due to unreasonable action by the IRS*

Under present law, taxpayers do not have a specific right to bring an action against the Government for damages sustained due to unlawful actions taken by an IRS employee. The provision would grant taxpayers the right to sue the Federal Government in Federal district court or Tax Court for damages if in connection with the determination or collection of any Federal tax, an officer or employee of the IRS carelessly, recklessly, or intentionally disregards any provision of Federal law or any regulation promulgated under the Internal Revenue Code. The taxpayer could recover the costs of the action plus actual direct economic damages sustained by the taxpayer as a proximate result of the unlawful actions or inaction of the IRS employee. The provision would apply to actions of IRS officers or employees that occur after enactment.

(17) *Jurisdiction to restrain certain premature assessments*

Under present law, jurisdiction to restrain IRS assessment and collection of tax rests solely with the Federal district courts. The provision grants the Tax Court jurisdiction (concurrent with Federal district courts) to restrain the assessment and collection of any tax by the IRS if the tax is the subject of a timely filed petition pending before the Tax Court. The provision would apply to orders entered after enactment.

(18) *Jurisdiction to enforce overpayment determinations*

Under present law, if the IRS fails to refund an overpayment determined by the Tax Court, the taxpayer must seek relief in another court. The provision would grant the Tax Court jurisdiction to order the refund of an overpayment plus interest if, within 120 days after a Tax Court decision has become final, the IRS fails to refund to a taxpayer an overpayment determined by the Tax Court. The provision would apply to overpayments determined by the Tax Court which have not been refunded by the 90th day after enactment.

(19) *Jurisdiction to review certain sales of seized property*

Under present law, if a taxpayer wishes to contest an IRS determination to sell property seized pursuant to a jeopardy assessment, the only recourse is to bring suit in Federal district court. The provision would grant the Tax Court jurisdiction during the pendency of proceedings before it to review the IRS' determination to sell property seized pursuant to a jeopardy assessment. The provision would be effective on the 90th day after enactment.

(20) *Jurisdiction to redetermine interest on deficiencies*

Under present law, if, following a decision by the Tax Court, a taxpayer disagrees with the IRS' interest computation, the Tax Court does not have jurisdiction to resolve that dispute. The provision would permit a taxpayer, within one year from the date the Tax Court decision becomes final, to move to reopen the Tax Court proceeding for a determination of interest due. The provision would apply to assessments of deficiencies made after enactment.

(21) *Jurisdiction to modify decisions in certain estate tax cases*

Under present law, certain estates which consist largely of an interest in a closely held business may elect to pay Federal estate tax over an extended-payment period. If such an election is made, the amount of the estate tax deduction for interest to which an estate is entitled cannot be determined until the interest is paid, and the Tax Court may not enter a final judgment in the case until the extended-payment period has expired. The provision would grant the Tax Court authority to enter a final decision in an estate tax case in which an extended-payment period is elected and subsequently, if necessary, modify the decision at the end of the extended-payment period to reflect interest actually paid by the estate. The provision would apply to Tax Court cases for which the decision is not final on the date of enactment.

(22) *Refund jurisdiction for the Tax Court*

Under present law, the Tax Court has no jurisdiction to determine whether a taxpayer has made an overpayment except in the context of a deficiency proceeding. If the IRS rejects a taxpayer's refund claim, or does not act within six months, then the taxpayer may bring an action for refund in Federal district court or the United States Claims Court, but not in the Tax Court. The provision would grant the Tax Court jurisdiction over tax refund actions against the IRS where there is already pending and awaiting submission for disposition by a judge a deficiency action in the Tax Court, and where the issue in the refund action is related by subject matter to the deficiency action or the result in either of the two actions will affect the amount in controversy in the related action. All proceedings in the Tax Court would be stayed for 180 days if a refund action is filed in the Tax Court and there is a showing by the IRS that there has been no audit of the taxpayer's return for the period or type of tax involved in the refund action. The general prerequisites governing the commencement of tax refund actions would apply to refund actions filed in the Tax Court. A taxpayer would continue to have the option of filing a claim for refund in the appropriate Federal district court or the United States Claims Court. The provision would apply to proceedings commenced in the Tax Court six months after enactment.

B. Modification of Low-Income Housing Credit Provisions (Sec. 786)

In general, a building must be placed in service in the year in which a credit allocation is received from the applicable State housing agency. The provision permits the building to be placed in service in the year in which the credit allocation is received or in either of the two succeeding years provided that at least 10 percent of the project costs were paid by the end of the year in which the credit allocation was received. The provision defines project costs to include the total costs budgeted to acquire and develop the project. The provision applies only to credit allocations for new construction and substantial rehabilitations (as defined under current law). The provision is effective for all credit allocations made after December 31, 1987.

C. Extend Mortgage Revenue Bonds Through June 30, 1989 (Sec. 787)

Qualified mortgage bonds (QMBs) are tax-exempt bonds the proceeds of which generally are used to make mortgage loans to first-time homebuyers. QMBs are issued subject to the State private activity volume limitations. As an alternative to QMBs, States and local governments may elect to trade bond authority available under the State's private activity volume limitation and issue mortgage credit certificates (MCCs). MCCs may be issued to the same persons who qualify for QMB financing. Authority to issue QMBs and to trade bond authority to issue MCCs expires after December 31, 1988. The provision would extend the QMB and MCC for six months, through June 30, 1989.

The provision would be effective on the date of the bill's enactment.

D. Extension of Exclusion for Employer-Provided Educational Assistance Through 1988 (Sec. 788)

Under present law, an individual may (subject to the two-percent floor on nonreimbursed employee expenses) deduct from income amounts expended for education if the education is job-related (sec. 162). Education generally is job-related if it (1) maintains or improves skills required for the employee's job, or (2) meets the express requirements of the individual's employer that are imposed as a condition of continued employment in the same job. Job-related education expenses that are reimbursed by an individual's employer are excludable from gross income. Educational assistance provided by the employer that is not job-related is includible in income.

Under prior law (taxable years beginning before January 1, 1988), an employee's gross income for income and employment tax purposes did not include amounts paid or incurred by the employer for educational assistance provided to the employee (without regard to whether the education was job-related) if such amounts were paid or incurred pursuant to an educational assistance program that met certain requirements (sec. 127). This exclusion, which expired for taxable years beginning after December 31, 1987, was limited to $5,250 of educational assistance with respect to an individual during a calendar year and did not apply to education involving sports, games, or hobbies.

Under the provision, the exclusion under section 127 for educational assistance would be restored retroactively to the date of expiration and would be extended so that it would expire for taxable years beginning after December 31, 1988. However, the exclusion under section 127 would not apply to any payment for, or the provision of any benefits with respect to, any graduate level courses of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or similar advanced academic or professional degree. For this purpose, the phrase "graduate-level course" means a course taken by an individual who (1) has received a bachelor's degree (or the equivalent thereof), or (2) is receiving credit toward a more advanced degree. This graduate education rule would not apply to graduate teaching or research assistants who receive tuition reduction under section 117(d), i.e., the scholarship rules. This graduate education rule also would not affect an employee's ability to exclude from income employer-provided job-related educational assistance.

In addition, the provision would clarify the definition of education ineligible for the section 127 exclusion—i.e., education involving sports, games, or hobbies. Under this clarification, education with respect to a subject commonly considered a sport, game, or hobby, such as photography or gardening, would be ineligible for the exclusion unless such education (1) has a reasonable relationship to an activity maintained by the employee for profit; (2) has a reasonable relationship to the business of the employer; or (3) is required as part of a degree program. Of course, education meeting these criteria may fail to be eligible for the exclusion for other reasons (such as the graduate education rule described above).

Also, it was unclear under prior law whether the prohibition on providing employees with a choice between nontaxable educational assistance benefits under section 127 and other remuneration includible in gross income prohibited the provision of taxable and nontaxable educational assistance benefits from a single trust. The provision would clarify in legislative history the prior-law rules so that it is permissible to pay taxable and nontaxable educational assistance benefits from the same trust.

The provision generally would be effective as of the date of the expiration of the exclusion. However, the provisions with respect to hobbies and payments from the same trust would be considered retroactive clarifications of prior law.

E. Extension of Exclusion for Employer-Provided Group Legal Services Through 1988 (Sec. 789)

Under prior law, amounts contributed by an employer to a qualified group legal services plan for an employee (or the employee's spouse or dependents) were excluded from the employee's gross income for income and employment tax purposes (sec. 120). The exclusion also applied to any services received by an employee (or the employee's spouse or dependents) or any amounts paid to an employee under such a plan as reimbursement for the cost of legal services for the employee (or the employee's spouse or dependents). In order for the exclusion to apply, the group legal services plan was required to fulfill certain requirements. The exclusion for group legal services benefits expired for taxable years ending after December 31, 1987.

In addition, under prior law, an organization, the exclusive function of which was to provide legal services or indemnification against the cost of legal services as part of a qualified group legal services plan, was entitled to tax-exempt status (sec. 501(c)(20)). The tax exemption for such an organization expired for taxable years ending after December 31, 1987.

Under the provision, the exclusion for group legal services and the section 501(c)(20) exemption would be restored retroactively to the date of expiration and would be extended so that they would expire for taxable years ending after December 31, 1988. However, under the provision, the exclusion of the premium value of any insurance-type protection against legal expenses for any individual in a taxable year would be limited to $70. This limit would apply to the premium value of a plan (whether insured or self-insured) but not to the reimbursements or services provided under the plan.

In addition, under the provision, the provision under a tax-exempt trust of group legal services benefits that are in excess of the $70 limit and taxable solely for that reason would not cause the trust to lose its tax-exempt status.

Also, for taxable years ending before January 1, 1989, the provision under a cafeteria plan of a group legal services benefit that is taxable solely because of the $70 cap would be considered the provision of a qualified benefit (sec. 125(e)) and thus would not disqualify the cafeteria plan.

The provision would be effective as of the date of the expiration of the exclusion and exemption.

F. Extension of Special Student Loan Bond Arbitage Rules through June 30, 1989 (Sec. 790)

Generally, arbitrage profits earned on nonpurpose investments acquired with the gross proceeds of any tax-exempt bond must be rebated to the United States. In addition, temporary periods when bond proceeds may be invested in higher yielding investments are statutorily limited for pooled financing bonds. The Tax Reform Act of 1986 provided an exemption from these requirements for certain qualified student loan bonds issued before January 1, 1989.

The provision would provide a 6-month extension of these special rules, for bonds issued before July 1, 1989. The provision would be effective on the date of the bill's enactment.

G. Extension of Business Energy Tax Credits for Solar, Geothermal and Ocean Thermal Property Through June 30, 1989 (Sec. 791)

Under present law, three business energy tax credits are scheduled to expire after December 31, 1988:

(1) Business solar—10% credit
(2) Geothermal—10% credit
(3) Ocean thermal—15% credit.

These credits were extended in the Tax Reform Act of 1986 through 1988, with the tax credit rates effective in 1988 as shown above.

Under the provision, these credits would be extended through June 30, 1989, at the present (1988) tax credit rates. The extension of the present energy tax credit rates would become effective on January 1, 1989.

H. Extension Of Modified Targeted Jobs Tax Credit Through June 30, 1989 (Sec. 792)

The present-law targeted jobs tax credit provides a tax credit to employers for hiring individuals from nine targeted groups. The credit is 85 percent of the first $3000 of wages paid to disadvantaged summer youth employees, and 40 percent of the first $6000 of wages paid to all other qualified individuals. The credit is available for individuals who begin work before January 1, 1989.

The provision would extend the credit for individuals who begin work before July 1, 1989. In addition, the provision would reduce the disadvantaged summer youth credit percentage from 85 percent to 40 percent.

The provision would be effective for individuals who begin work after December 31, 1988 and before July 1, 1989.

I. Extension of Tax Credit for Research Expenditures (Sec. 793)

The present-law research credit (including the university basic research credit), which is scheduled to expire after December 31, 1988, would be extended for three additional months, i.e., through March 31, 1989. A pro rata rule would apply for purposes of computing the extended credit, pursuant to which the taxpayer's qualified research expenditures (or basic research payments) for January 1, 1989 through March 31, 1989 would be deemed equal to one-quarter of the taxpayer's qualified research expenditures (or basic research payments) for calendar year 1989.

J. Financially Troubled Thrift Institutions: Reorganizations, NOLs, and FSLIC Assistance Payments (Sec. 794)

Under present law, three special rules enacted in the Economic Recovery Tax Act of 1981, and repealed as of December 31, 1988, by the Tax Reform Act of 1986, apply to financially troubled thrift institutions:

(1) Under section 597 of the Code, gross income of a domestic savings and loan association does not include amounts received from the Federal Savings and Loan Insurance Corporation ("FSLIC") under its financial assistance program, and no basis reduction is required on account of the receipt of such assistance payments;

(2) Under section 368(a)(3)(D) of the Code, certain FSLIC assisted acquisitions of financially troubled thrift institutions are permitted to qualify as tax-free reorganizations, without regard to the continuity of interest requirement; and

(3) Under section 382(l)(5)(F), special rules apply to the carryover of net operating losses, built-in losses, and excess credits of a thrift institution that has certain ownership changes.

The provision would generally extend the special present law rules for financially troubled thrift institutions for six months, through June 30, 1989, and would expand these provisions to include financially troubled banks and payments made to such banks by the Federal Deposit Insurance Corporation ("FDIC").

In general, assistance payments made by FSLIC and FDIC would be tax exempt by reason of section 597. However, to the extent of 50 percent of such assistance payments, there would be a reduction in deductions for net operating losses existing at the time of the regulatory assistance, interest expense, and loan portfolio built-in losses.

In the case of taxable asset acquisitions, there will be no reduction in any deductions on account of any payments made to make up the difference between the fair market value of the assets transferred and the liabilities assumed. However, in all other cases involving FSLIC or FDIC assistance payments, including, for example, periodic maintenance payments and lump sum payments made in the context of a reorganization, there would be a reduction of the losses or the interest deduction equal to 50 percent of the assistance payments.

The provision would be effective as follows:

(1) The extension of section 368(a)(3)(D) would apply to acquisitions after December 31, 1988, and before July 1, 1989;

(2) The extension of section 597 and the 50 percent cutback would apply to assistance payments made pursuant to acquisitions occurring after December 31, 1988 and before July 1, 1989; and

(3) The extension of section 382(l)(5)(F) would apply to any equity structure shifts or transactions occurring after December 31, 1988, and before July 1, 1989.

K. Repeal Uniform Capitalization Rules for Free-Lance Authors, Photographers, and Artists (Sec. 795(a))

Under present law, uniform capitalization rules generally apply to the production of all tangible personal property and to the purchase and holding of property for resale. The provision would exempt from the uniform capitalization rules any otherwise deductible expense that is paid or incurred by an individual engaged in the business of being a writer, photographer, or artist. The exemption would apply only to the individual whose personal efforts create or may reasonably be expected to create a literary manuscript, musical composition, dance score, photograph, photographic negative or transparency, picture, painting, sculpture, statue, etching, drawing, cartoon, graphic design, or original print edition. The exemption would also apply to expenses of a personal service corporation that directly relate to the activities of a qualified employee-owner if such expenses would qualify for the exemption had they been paid or incurred directly by the employee-owner.

The provision would be effective as if included in the Tax Reform Act of 1986.

L. Repeal Uniform Capitalization Rules for Certain Producers of Animals; Depreciation of Certain Farm Property

1. Uniform capitalization rules for producers of animals (sec. 795(b))

Under present law, the uniform capitalization rules apply to the production of an animal in a farming business if (1) the animal has a preproductive period of more than two years or (2) the taxpayer engaged in the farming business is a corporation, partnership or tax shelter that is required to use an accrual method of accounting. The provision would exempt from the uniform capitalization rules otherwise deductible expenses that are incurred by a taxpayer in connection with the production of animals in any farming business other than a farming business of a corporation, partnership or tax shelter that is required to use an accrual method of accounting.

The provision would apply to costs incurred after December 31, 1988.

2. Depreciation of certain farm property (sec. 795(b))

Under present law, property with recovery periods of less than 15 years may be depreciated using the 200 percent declining balance method. A special rule for farming businesses subject to the capitalization rules on preproductive expenses which elect to deduct these pre-productive expenses requires them to depreciate assets using the alternative depreciation system. Also, single-purpose agricultural structures are assigned a 7-year recovery period. The provision would make the 150-percent declining balance method the applicable depreciation method for property used in a farming business. The exception requiring farming businesses still subject to the pre-productive capitalization rules which elect to deduct these expenses to use the alternative depreciation system would still apply. In addition, the recovery period for single-purpose agricultural structures would be ten-and-one-half years.

The provision would generally apply to property placed in service after December 31, 1988. An exception is provided for any property placed in service before January 1, 1990 if such property (1) is constructed, reconstructed, or acquired by the taxpayer pursuant to a written contract that was binding on September 8, 1988, or (2) is constructed or reconstructed by the taxpayer and such construction or reconstruction began by July 14, 1988.

M. Extension and Modification of Allocation and Apportionment Rules for R&D Expenses (Sec. 796)

The degree to which a U.S. taxpayer that pays foreign income taxes can take advantage of the foreign tax credit depends, in part, on the proportion of its entire worldwide taxable income that is from foreign sources. Expenses that may relate to both U.S. source and foreign source *gross* income (such as R&D expenses) must be allocated and apportioned among U.S. and foreign sources in order to arrive at the relevant proportion of foreign source *taxable* income to worldwide *taxable* income. For certain taxable years beginning before August 14, 1981 and for taxable years beginning after August 1, 1987, R&D expenses were and are allocated under detailed Treasury regulations promulgated for this purpose in 1977. The regulation is designed to allocate and apportion R&D expenses on the basis of their respective contributions to U.S. source and foreign source net income.

For the intervening taxable years indicated above, R&D expenses were allocated and apportioned under statutory rules designed with particular emphasis on encouraging the conduct of R&D in the United States. This result was accomplished by enacting temporary rules that generally allocated more U.S. incurred R&D expenses to U.S. source gross income than would have been allocated under the 1977 regulation. The statutory methods thus tended to boost any taxpayer's proportion of foreign source taxable income to worldwide taxable income, in many cases allowing the foreign tax credit for foreign income taxes that otherwise would not have been creditable.

Under the provision, a new statutory allocation method, designed to provide an additional tax incentive to perform R&D in the United States, would be temporarily effective for the first four months of the taxpayer's first taxable year beginning after August 1, 1987. (In determining which R&D expenses were incurred in which four-month period of that taxable year, R&D expenses would be treated as if incurred ratably throughout the taxable year.) The proposed method would allow U.S. persons to allocate 64 percent of U.S. R&D expenses (other than any such amounts allocated to one geographical source because of legal requirements) to U.S. source income. Similarly, U.S. persons would allocate 64 percent of expenses for R&D conducted outside the United States (other than any such amount allocated to one geographical source because of legal requirements) to foreign source income. The remainder of U.S. and foreign R&D expenses would be allocated on the basis of gross sales or (subject to a limit) gross income. The amount of R&D expense allocated to foreign source income on the basis of gross income would in all cases be at least 30 percent of the amount allocated to foreign source income on the basis of gross sales.

N. Controlled Foreign Insurance Corporations Owned by U.S. Persons (Sec. 797)

Under present law, foreign corporations engaged in the insurance business in the United States are subject to the branch level taxes even where those corporations are controlled by U.S. persons. If such corporations were reorganized as U.S. corporations they could avoid the branch tax, but would potentially be subject to a tax on accumulated earnings and profits. This tax results from the general rule that when a U.S.-controlled foreign corporation is reorganized as a U.S. corporation, certain accumulated earnings and profits of the foreign corporation must be taxed in order for the reorganization to be considered a nonrecognition event.

Under the provision, controlled foreign corporations engaged in the insurance business could make an election to be treated as a U.S. corporation, thereby avoiding the branch level taxes, so long as certain conditions and requirements are met. Dividends paid by an electing corporation would be eligible for the dividends received deduction to the extent paid out of earnings and profits for periods that the election is in effect. In lieu of paying an immediate U.S. tax on earnings and profits accumulated prior to the election, the provision would provide for a tax equal to three-quarters of one percent of capital and surplus (but limited to $1,500,000.) of any foreign corporation that elects to be treated as a U.S. corporation.

The provision would be effective for taxable years beginning after December 31, 1987.

O. Elimination of Treasury Authority to Lengthen Depreciable Lives (Sec. 798)

Under present law, the Treasury Department generally has the authority to establish or change the class lives of depreciable assets. The Tax Reform Act of 1986 established an office in Treasury to monitor and analyze actual experience of tangible depreciable assets and to report its findings to the Secretary who can then prescribe new depreciable lives for these assets. Certain assets may not have their lives adjusted or lengthened before January 1, 1992.

The provision would remove Treasury's authority to lengthen the depreciable life of an asset. Treasury would still retain authority to shorten an asset's depreciable life. The Committee expects the Treasury to continue to undertake and expeditiously to complete studies of the actual experience of tangible depreciable assets. The provision would require the findings of these studies to be reported to Congress. The provision would be effective on the date of enactment.

P. Pension Reversions of Qualified Plan Assets (Sec. 799)

Under present law, a 10-percent excise tax is imposed on an employer reversion from a qualified plan (sec. 4980). The provision would temporarily increase the excise tax from 10 percent to 60 percent. Present-law exceptions to the excise tax, such as the exception for certain transfers of reversions to an employee stock ownership plan, would continue to be exempt from the increased excise tax. In addition, the provision would require that the excise tax be paid by the employer by the end of the month following the month in which the reversion occurs.

The increase in the excise tax would apply with respect to reversions received after July 26, 1988, and before May 1, 1989. However, the increase in the excise tax would not apply to reversions pursuant to a plan termination if (1) with respect to plans subject to Title IV of ERISA, a notice of intent to terminate required under section 4041(b) of ERISA was provided to participants before July 27, 1988, or, if there are no participants, a notice of intent to terminate was provided to the PBGC before July 27, 1988, (2) with respect to plans subject to Title I of ERISA, a notice of intent to reduce future accruals required under section 204(h) of ERISA was provided to participants in connection with the termination before July 27, 1988, or (3) with respect to plans not subject to Title I or Title IV of ERISA, the board of directors of the employer approved the termination or the employer took similar binding action before July 27, 1988. The acceleration of time for payment of the tax would apply to reversions received on or after May 1, 1989.

V. OTHER, NONTAX PROVISIONS

TITLE VIII—MEDICARE AND MEDICAID MINOR AND TECHNICAL AMENDMENTS

Hospital Payments for Catastrophic Illness

(Section 801 of the Amendment)

Prior to the enactment of the Medicare Catastrophic Coverage Act of 1988, Medicare beneficiaries were eligible for a limited number of hospital days each year; charge for hospital days beyond the limits were the responsibility of the beneficiary. The catastrophic legislation makes beneficiaries eligible for 365 days of hospital care annually.

Medicare payments to most hospitals are made under the prospective payment system (PPS), which pays hospitals a fixed amount for each case. Some hospitals (long-term care, childrens', rehabilitation and psychiatric) are exempt from PPS and are paid their costs, subject to target rate-of-increase limits created in the Tax Equity and Fiscal Respsonsibility Act of 1982 (TEFRA), and can receive bonuses if their costs remain below the limits. Payments to both types of hospitals are based on the average costs of providing Medicare covered services during a base year, indexed forward. These costs did not include the costs of caring for partients beyond their available Medicare days.

Under the catastrophic legislation, hospitals will no longer be paid by patients for very long hospital stays, but by Medicare. However, Medicare's current rates do not accommodate the costs of newly available days. The catasrophic legislation requires the Secretary of HHS to make certain changes in Medicare hospital payment rules to reflect lower beneficiary payments to hospitals resulting from the elimination of a day limit on Medicare hospital services. These requirements are meant to ensure that hospitals are not adversely affected by the expansion of Medicare benefits.

For PPS hospitals, the Secretary is required to take into account as appropriate reduced beneficiary cost-sharing for hospital services under the Act in setting payments rules. For PPS-exempt (TEFRA) hospitals, the Secretary is required to adjust the cost limits for each hospital.

The amendment clarifies that adjustments in cost limits for TEFRA hospitals should be made beginning January 1, 1989. As drafted, the conference agreement compensates TEFRA hospitals during hospital fiscal years beginning on or after October 1, 1988; some hospitals would receive compensation before they incurred additional costs and others would recieve no compensation for as long as nine months. The amendment also clarifies that TEFRA hospitals must be protected, not only from exceeding the cost limits as a result of catastrophic, but also from any reduction in bonus payments.

Treatment of Certain Hospitals as Rural Hospitals for Certain Purposes

(Section 802 of the Amendment)

Under the Prospective Payment system (PPS), Medicare pays different rates to urban and rural hospitals. A hospital is urban, and qualifies for higher rates, if it is located in a Metropolitan Statistical Area (MSA) as defined by the Office of Management and Budget. Under the Omnibus Budget Reconciliation Act of 1987, hospitals in rural counties meeting certain criteria are considered to be located in an adjacent urban area and qualify for higher Medicare rates, beginning October 1, 1988. Under OBRA, higher payments to hospitals in these redesignated counties are to be financed through an across-the-board payment reduction to rates for all urban hospitals.

The Department of Health and Human Services has issued proposed rules setting Medicare hospital payment policy for FY1989. As a result of the changes described above, some hospitals located in urban areas (prior to OBRA) to which new urban hospitals have been added, as well as some rural hospitals, will experience payment reductions (above and beyond the across-the-board adjustment described above) beginning October 1st, 1988.

This effort occurs in areas where the addition of new hospitals to an urban area, or the deletion of hospitals from a rural area, substantially changed the calculation of the area wage index used in computing PPS payments.

The amendment requires the Secretary, effective October 1, 1989, to compute the area wage index as though hospitals who qualify for urban status under OBRA's redesignation were still paid as rural hospitals.

Demonstration Projects With Respect to Chronic Ventilator-Dependent Units in Hospitals

(Section 803 of the Amendment)

The Medicare Catastrophic Coverage Act of 1988 requires the Secretary of HHS to conduct up to five demonstration projects, for up to three years each, of the appropriateness of classifying hospital units that

treat chronic ventilator-dependent patients as rehabilitation units for the purposes of the prospective payment system (PPS). (Rehabilitation units are exempt from PPS and are reimbursed on a reasonable cost basis.)

The amendment clarifies that the Secretary is required to conduct at least five demonstration projects for at least three years each.

Election of Personnel Policy for Commission Employees

(Section 804 of the Amendment)

The Omnibus Budget Reconciliation Act of 1987 provided that employees of the Prospective Payment Assessment Commission (PROPAC) and the Physician Payment Review Commission (PHYSPRC) should be treated as Senate employees for administrative purposes.

The amendment clarifies that, with respect to PROPAC, this provision is effective only for employees hired on or after December 22, 1987. Personnel hired before this date would have the option to elect to continue under personnel policies in effect previously. All personnel would be required to make a one-time election no later than 60 days after enactment of this amendment.

Increase in Authorization for the Patient Outcome Assessment Research Program

(Section 805 of the Amendment)

The Omnibus Budget Reconciliation Act of 1986 authorized a program of research on patient outcomes of selected medical treatments and surgical procedures for the purpose of assessing their appropriateness, necessity, and effectiveness. The amounts authorized to be appropriated from the Medicare Trust Funds for the Program are $6 million for fiscal year 1987, and $7.5 million for each of the fiscal years 1988 and 1989.

The amendment increases the authorization to $10 million for fiscal year 1989, and authorizes $20 million for fiscal year 1990 and $30 million for fiscal year 1991.

Payment Adjustments to Organizations With Risk-sharing Contracts

(Section 806 of the Amendment)

When Medicare contracts with a health maintenance organization (HMO) on a risk sharing basis, the amount of the Medicare payment to the HMO is determined prospectively, based on the estimated average cost of providing all covered Medicare services to a beneficiary in the area. Risk sharing contracts are annual contracts. During the calendar year 1988, the Secretary issued a guideline that changed the eligibility guidelines for extended care services. As a result of the change, more individuals were eligible for extended care services than had been anticipated at the time the payment levels for 1988 were established.

The amendment provides that any HMO that experiences increased costs in 1988 due to the change in the extended care benefit eligibility criteria, may submit to the Secretary a revised adjustment community rate for 1988. The Secretary shall review the revised rate within 90 days of submittal, and if he approves the revision he shall make additional payments to the HMO equal to the increase in the adjusted community rate.

While this amendment applies only to the change in the extended care criteria, the Committee urges the Secretary to take steps to modify the HMO contracting process and cycle to allow HMOs some relief in similar situations in the future. Because HMOs are locked into a pre-established rate, the Secretary must be sensitive to their special needs when actions are taken that may have an impact on the cost of providing Medicare services.

Fee Schedule for Payments to Certified Registered Anesthetists

(Section 807 of the Amendment)

Payment for the services of a certified registered nurse anesthetist (CRNA) are currently made under part A on a cost pass-through basis to hospitals who employ or contract with them, or under part B to physicians who employ or contract with them. The Omnibus Budget Reconciliation Act of 1986 provided for direct Medicare reimbursement for the services of a CRNA, beginning January 1, 1989. Payment would be made only under part B and would be equal to 80 percent of a fee schedule established by the Secretary. The Secretary was directed to establish the fee schedule at a level such that the total amount paid under the Medicare program for CRNA services, plus applicable coinsurance, would be the same as total payments under the Medicare program would have been under the reimbursement rules as in effect in 1986. The Secretary was further directed to reduce the fee schedule, or the payments to physicians for medical direction of CRNAs, or both, to the extent necessary to ensure that total Medicare payments plus applicable coinsurance for CRNA services and medical direction would be the same as total Medicare payments for those services would have been under the reimbursement rules as in effect in 1986.

The amendment clarifies that the comparison between payment levels under the fee schedule and the 1986 reimbursement rules for payment for medical direction and CRNA services should take coinsurance into account on both sides of the equation. Thus the second comparison described above would be between (A) total Medicare payments, plus applicable coinsurance, for CRNA services and medical direction under the 1986 rules, and (B) total Medicare payments for CRNA services and medical direction, plus applicable coinsurance, under the new 1989 rules.

Clarification of Covered Certified Nurse Midwife Services

(Section 808 of the Amendment)

Section 4073 of the Omnibus Budget Reconciliation Act of 1987 provided coverage under the Medicare program for services furnished by a certified nurse-midwife. Covered services are defined as services that are authorized under State law to be furnished by a certified nurse-midwife, and that would be covered by Medicare if furnished by a physician. The definition of a nurse-midwife refers to a nurse who "performs services in the area of management of the care of mothers and babies throughout the maternity cycle". The proposed regulations promulgated by the Health Care Financing Administration to implement this provision limit covered services to services furnished during the maternity cycle, although some State laws allow nurse-midwives to furnish other gynecological services that are not within the maternity cycle.

The amendment clarifies that the definition of who qualifies as a nurse-midwife does not limit the covered services to those furnished during the maternity cycle.

Coverage of Psychologist Services When Provided On-Site at a Community Mental Health Center or Off-Site as Part of a Treatment Plan

(Section 809 of the Amendment)

The Omnibus Budget Reconciliation Act of 1987 provided for direct payment under the Medicare program for the services of a psychologist furnished at a community mental health center.

The amendment clarifies that services of a psychologist will be covered under the OBRA 87 provision when provided on-site at the community mental health center, and then provided necessarily off-site under the auspices of the clinic as part of the treatment plan. Services provided by a psychologist at his private office away from the clinic would not be covered.

Trip Fees for Clinical Laboratories

(Section 810 of the Amendment)

Section 1833(h)(3) of the Social Security Act requires the Secretary to make special payments with respect to lab specimens that must be collected and brought to the lab. A fee is authorized under 1833(h)(3)(A) for the cost of collecting the specimen, and a trip fee is authorized under 1833(h)(3)(B) for travel expenses of trained personnel who must travel to collect a specimen. Trip fees are allowed only for specimens collected from a patient who is homebound or an inpatient in a nursing facility. Most carriers have established trip fees based on average costs, or on the number of miles, or a combination of the two methods.

The amendment requires that, in establishing trip fees, all carriers that use a flat fee per trip must also allow the lab the option to bill on the basis of actual mileage. Each carrier would have to implement this requirement in a budget neutral manner.

Requirement of Physician Care and Plan with Respect to Outpatient Physical Therapy Services Limited to the Provisions of Such Services to Medicare Beneficiaries

(Section 811 of the Amendment)

Medicare covers outpatient physical and occupational therapy services provided by a provider of services, clinic, rehabilitation agency, or public health agency, and services by a physical or occupational therapist in his office or at the patient's home. The statute requires that the services be provided to individuals who are under the care of a physician, and that the physician establish and periodically review a plan for furnishing the services. The regulations implementing the provision require that the entity furnishing the services must meet the requirements relating to physician care and to the establishment and review of the plan of care by a physician for all its patients, not just for Medicare beneficiaries.

Some States have enacted physical therapy and occupational therapy practice laws that allow a therapist to provide services independently, without a physician referral. However, because the Medicare requirements apply to all patients, the State laws have been in effect superseded by the Medicare requirements.

The amendment clarifies that the requirements relating to physician care and establishment and review of the plan of care by a physician apply only to Medicare beneficiaries, and State law would apply to other patients.

Delay in Issuance of Final Regulations Concerning the Use of Voluntary Contributions or Provider-paid Taxes by States to Receive Federal Matching Funds

(Section 812 of the Amendment)

The Medicaid program is a Federal-State program under which federal matching funds are available to States for medical assistance programs that meet specified federal requirements. The federal matching rate

varies by State based on State per capita income. Under current law, some States use donated funds to provide a portion of the State share, which are then matched by federal funds. Some States also use funds that are generated from taxes on health care providers to draw federal matching funds.

In the President's proposed budget for fiscal year 1989, the administration indicated that it would issue regulations to limit the use of donated funds as part of the State share. The regulations have not yet been published.

The amendment prohibits the Secretary from issuing final regulations that change the policy governing the use of donated funds or the use of revenues generated from provider taxes until after February 15, 1989. Proposed regulations could be published before that date.

Formula Modification for Determining State Expenditures Under the Medicaid Long-term Care Waiver Program

(Section 813 of the Amendment)

Section 1915(d) of the Social Security Act provides States an option to receive Medicaid funding for home and community-based services for the elderly, subject to limits based on long-term care expenditures (including nursing facility services) during a base year. The base year amount is updated to take into account growth in the elderly population and increases in the cost of services. However, the base year amount is not adjusted to take into account new mandated services or program expansions, such as the spousal impoverishment protections enacted in the Medicare Catastrophic Coverage Act of 1988.

The amendment provides that the base year amounts would be adjusted to take into account new services and program expansions mandated by Federal law.

Extension of Time Period for Certain Intermediate Care Facilities for the Mentally Retarded to Submit Plans of Correction or Reduction

(Section 814 of the Amendment)

Section 9516 of the Consolidated Omnibus Budget Reconciliation Act of 1985 allowed an intermediate care facility for the mentally retarded (ICF/MF) that was subject to a termination action under the Medicaid program to submit a 6-month plan of correction or 36-month plan of reduction as an alternative to decertification. The Department of Health and Human Services did not issue regulations implementing the section until January 25, 1988. The provision is scheduled to sunset on April 6, 1989, three years after the date of enactment of COBRA. The final regulations did not allow the use of the plan of correction or reduction in the case of a facility that was subject to decertification because of failure to provide active treatment.

The amendment provides that the option to submit a plan of correction or reduction would be available in any case where there was no immediate threat to the health or safety of the facility residents, including failure to provide active treatment. However, during a plan of reduction, active treatment would have to be provided for the residents who remain in the facility. The sunset date would be extended to January 25, 1991, three years after the final regulations were actually issued.

Nursing Facility Decertification Hearing Procedures

(Section 815 of the Amendment)

Section 1910 of the Social Security Act provides that a nursing facility that is a party to a decertification proceeding based on a federal look-behind review may continue to participate in the Medicaid program while a hearing on the issue is pending. The Department of Health and Human Services has taken the position that evidence of compliance based on a later federal or State survey may not be admitted at such hearing. Thus a facility may be terminated on the basis of noncompliance that has subsequently been corrected.

The amendment provides that in a decertification proceeding, nursing facilities would be allowed to submit evidence of correction of deficiencies based on federal or State surveys conducted after the initial finding of noncompliance. This provision would not apply in the case of intermediate sanctions. While the amendment allows the results of a subsequent survey to be admitted as evidence, such evidence does not preclude a decertification finding. The ALJ would also take into account the facility's record of noncompliance and the extent and likely duration of the compliance exhibited in such subsequent survey.

Charter for the National Academy of Social Insurance

(Sections 901–916 of the Amendment)

The amendment authorizes the granting of a Federal charter for the National Academy of Social Insurance. The National Academy is a nonprofit, nonpartisan organization devoted to furthering knowledge and understanding of Social Security and related programs. The provision requires the Academy, as a condition of maintaining its charter, to meet various qualifications generally required of Federally chartered institutions such as maintaining its status as a nonprofit corporation and operating within the scope of the powers granted to it by its bylaws and articles of incorporation in the State or States in which it is incorporated. (The National Academy is incorporated in the District of Columbia.)

Foster Care Independent Living Initiatives

(Section 921 of the Amendment)

The Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99–272) authorized funds for State independent living programs for fiscal year 1987 and fiscal year 1988. These programs are to provide services to help children age 16 or over in the AFDC foster care program make the transition from foster care to independence. Children eligible for services under the program are those who are receiving assistance under the Title IV-E foster care program (which provides Federal assistance for foster care maintenance payments). Title IV-E assistance is limited to those foster care children who would have been eligible for AFDC before they were removed from their home and placed in foster care. The Secretary of Health and Human Services is required to provide Congress with a report on the program by July 1, 1988. The authorization level for this entitlement is $45 million for each of the two fiscal years. States did not begin receiving funds under the program until July 1987.

Under the amendment, the current authority for State independent living initiatives is extended for one year (through fiscal year 1989), with an authorization level of $45 million. The following additional changes are made:

1. States will be permitted to spend fiscal year 1987 carry-over funds in fiscal years 1988 and 1989.

2. States will be permitted to use funds under the foster care independent living program for services for two groups of children in addition to those authorized under current law (i.e., children who are receiving assistance under the Title IV-E foster care maintenance payment program): any or all children in foster care who are at least age 16; and, for up to 6 months after foster care payments or foster care ends, children previously in foster care and whose care or payments ended after the child attained age 16.

3. Independent living initiative funds may not be used for the provision of room and board.

4. The definition of case review system under Title IV-E is modified to clarify that the 18-month dispositional hearing also must include, with respect to a child who has reached age 16, the services needed to assist the child in making the transition from foster care to independent living.

5. State reports would be due on January 1, 1989, and a Federal report would be due on March 1, 1989.

The authority for States to include non-AFDC foster care children in the independent living program and the prohibition on the use of funds for room and board are effective on enactment. The remaining provisions take effect on October 1, 1988 contingent upon appropriation of funds.●

ORDERS FOR TOMORROW

RECESS UNTIL 9:30 A.M.

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 9:30 tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS—LABOR-HHS APPROPRIATIONS CONFERENCE REPORT

Mr. BYRD. Mr. President, I ask unanimous consent that on tomorrow, after the two leaders or their designees have been recognized under the standing order, there be a period for morning business to extend until the hour of 10 a.m., and that Senators may speak during that period for morning business for not to exceed 5 minutes each; that at the hour of 10 o'clock a.m. the Senate continue consideration of the Labor-HHS Appropriations Conference Report.

The PRESIDING OFFICER. Without objection, it is so ordered.

HOUR UNDER CLOTURE TO BEGIN AT 2 P.M.

Mr. BYRD. Mr. President, the Republican leader is agreeable to this request. I ask unanimous consent that the hour under the cloture rule on tomorrow begin running at 2 p.m., and that the hour be equally divided between Mr. HOLLINGS and Mr. PACKWOOD or their designees.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. I ask unanimous consent that the mandatory quorum under the rule be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXTENSION OF MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that morning business be extended and that Senators may speak therein, and that at the conclusion of Mr. DODD's remarks the Chair recess the Senate over under the order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

TRIBUTE TO SENATOR ROBERT BYRD

Mr. DODD. Mr. President, I rise today to pay tribute to our distinguished majority leader. It is well known that Senator ROBERT BYRD will not seek reelection to the office of majority leader in the 101st Congress, but rather will assume, we all hope, the chairmanship of the Appropriations Committee, and become the President pro tempore of the Senate.

Mr. President, I rise to pay tribute to BOB BYRD for a number of reasons. It is common knowledge in this Chamber and across this country that he has served with great distinction as majority leader, minority leader, and then majority leader again of the U.S. Senate. He has consistently provided solid leadership, a commitment to fairness and an unsurpassed knowledge of the parliamentary rules and procedures.

Furthermore, Mr. President, he has demonstrated genuine kindness and compassion towards his colleagues, towards his constituents, and towards the American people.

Mr. President, Senator BYRD has served, as you well know, as the Democratic leader in the Senate for 12 years. And as I mentioned earlier, he will move on to become President pro tempore of the Senate and chair the Appropriations Committee.

It is fitting that ROBERT BYRD, the son of a West Virginia coal miner, would find a home in the Democratic Party. From this Chamber, for the past 30 long years, he has voiced the concerns of millions of Americans who rely on good public servants.

Furthermore, it is a fitting chapter in the history of the American dream that the senior Senator from West Virginia rose to prominence from a very humble background, served in Washington for 30 years as a U.S. Senator, and never once forgot his roots, his people, or his duty.

Senator BYRD graduated valedictorian from his high school in Stotesbury, WV. He pumped gas, sold groceries, worked as a produce salesman, a butcher, and a welder before being elected a member of the West Virginia House of Delegates.

For the past 12 years, the Nation has confidently heard the reassuring sound of his voice as leader in the Senate. This year alone, he has guided the Senate through issues as diverse and as important as the omnibus trade bill, the INF Treaty, the catastrophic health insurance bill, and the Civil Rights Restoration Act. Senator BYRD led the fight to grant workers the right to plant closing notification and he championed the need to reform our campaign financing laws.

But the hallmark or his career in politics has not been the overwhelming margins of victory he has won in his home State nor the leadership positions he has held in the U.S. Senate.

The other half of the story is the man behind the headlines: His fairness, his sense of honor, his hard work, his honesty, and his devotion to giving his fellow citizen a fair shake. His unmatched political instincts, honed during his formative period as a young man whose struggle to earn a living during the Great Depression amid the West Virginia coal mines, have served him well under this Capitol dome.

His political career began when he won a seat to the West Virginia House of Delegates, and includes two terms in the West Virginia House, one term in the West Virginia Senate, three terms in the U.S. House of Representatives, and five terms in the U.S. Senate.

Mr. President, I should point out that Senator BYRD has served with two people in my family. He was elected in 1958 with my father, came to the Senate in the same year, served for 12 years with him, and I have had the privilege of serving with him for 8 years.

So my family has known BOB BYRD for many, many years and during his entire 30 years in the Senate. It is not just as a colleague, or as a fellow Democrat that I rise to pay tribute to him. He is a dear family friend, a personal friend, someone who has been very kind and thoughtful to me during my 8 years in the Senate, and who was extremely gracious to my father during his 12 years in the Senate.

And it is with a sense of sadness that I rise to report that he will not be seeking a leadership position in the 101st Senate. But I look forward to working with him in his new roles as chairman of the Appropriations Committee and President pro tempore of the Senate.

One of the facts about BOB BYRD that I know is known by many, but not by as many as should know. In 1963 BOB BYRD had already been in the Senate 4 years, but in that year he graduated cum laude from American University's School of Law, earning his JD after a decade of attending night school while working as a Member of Congress. In fact, at that commencement address in 1963, President Kennedy gave the address at American University. It was on the whole issue of nuclear arms, and on that day he presented to Senator BOB BYRD his juris doctorate degree.

I know it is a source of great pride to him, but it is something all of us take note of. In the midst of his congressional duties, he went to night school 10 years and graduated cum laude from law school.

Through his work to ensure an America that guarantees opportunity and equality, Senator BYRD has not only advanced the fortunes of all but also has written his own chapter in the American history of the honest and the great. He has set an example for all of us in this body, regardless of party. It has truly been an honor for me to serve with a man of Senator BYRD's compassion and depth. I join my other colleagues in wishing him all the best in the future, and I look forward to serving with him for many years to come.

PROGRAM

Mr. BYRD. Mr. President, the vote on or in relation to the Weicker motion would occur at around 12 o'clock, and then if there is a motion to recede, the vote on that motion would occur subsequent thereto, and those votes should all be disposed of by the time the two party conferences take place. Then at 2 o'clock when the party conferences have run their course, the 1 hour on the motion to invoke cloture on the House textile bill will begin running.

There is a vote on the motion to invoke cloture which would occur then at 3 o'clock p.m.

RECESS FOR THE PARTY CAUCUSES

Mr. BYRD. Mr. President, I ask unanimous consent that on tomorrow the Senate stand in recess between the hours of 12:45 p.m. and 2 p.m. to accommodate the two-party conferences.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, there will be no rollcall votes today. I indicated on Friday last that if a time agreement could be gotten today on the Labor, HHS appropriations bill, I would have no problem with putting over the votes until tomorrow. That agreement was gotten this afternoon, and consequently it is satisfactory to have the vote on tomorrow. That is the understanding, and that is when they will occur. There will be no rollcall votes today.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until 9:30 a.m. tomorrow.

Thereupon, at 4:40 p.m., the Senate recessed until tomorrow, Tuesday, September 13, 1988, at 9:30 a.m.

NOMINATIONS

Executive nomination received by the Secretary of the Senate September 9, 1988, after the recess of the Senate, under authority of the order of the Senate of February 3, 1987:

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

EARL ROGER MANDLE, OF OHIO, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE ARTS FOR A TERM EXPIRING SEPTEMBER 3, 1994, VICE RAYMOND J. LEARSY, TERM EXPIRED.

Executive nominations received by the Senate September 12, 1988:

INTER-AMERICAN DEVELOPMENT BANK

LARRY K. MELLINGER, OF CALIFORNIA, TO BE UNITED STATES EXECUTIVE DIRECTOR OF THE INTER-AMERICAN DEVELOPMENT BANK FOR A TERM OF THREE YEARS, VICE JOSE MANUEL CASANOVA, RESIGNED.

FEDERAL ENERGY REGULATORY COMMISSION

CHARLES A. TRABANDT, OF VIRGINIA, TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION FOR A TERM EXPIRING OCTOBER 20, 1992. (REAPPOINTMENT.)

JERRY JAY LANGDON, OF TEXAS, TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING OCTOBER 20, 1988, VICE ANTHONY G. SOUSA, RESIGNED.

JERRY JAY LANGDON, OF TEXAS, TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION FOR A TERM EXPIRING OCTOBER 20, 1992. (REAPPOINTMENT.)

EXTENSIONS OF REMARKS

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4 agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Tuesday, September 13, 1988, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

SEPTEMBER 14

9:30 a.m.

Banking, Housing, and Urban Affairs
Housing and Urban Affairs Subcommittee
To hold hearings on a staff report on the proposed National Affordable Housing Act.
SD-538

Energy and Natural Resources
Business meeting, to consider pending calendar business.
SD-366

Select on Indian Affairs
Business meeting, to mark up S. 187, Native American Cultural Preservation Act, H.R. 3621, Southern California Indian Lands Transfer Act, S. 2672, Lumbee Recognition Act, and S. Con. Res. 76, to acknowledge the contribution of the Iroquois Confederacy of Nations to the Development of the U.S. Constitution and to reaffirm the continuing government relationship between Indian tribes and the United States established in the Constitution; to be followed by hearings on S. 2723, to partition certain reservation lands between the Hoopa Valley Tribe and the Yurok Indians, to clarify the use of tribal timber proceeds.
SD-406

Select on Intelligence
To resume hearings to review the conduct of the Federal Bureau of Investigation inquiry into activities of the Committee on Solidarity with the People of El Salvador [CISPES].
SH-216

10:00 a.m.

Environment and Public Works
Environmental Protection Subcommittee
Hazardous Wastes and Toxic Substances Subcommittee
To hold joint hearings on the greenhouse effect and policies to mitigate adverse climate change.
SD-406

Foreign Relations
Business meeting, to resume consideration of S. 2756, to prohibit investments in and certain other activities with respect to apartheid in South Africa, and other pending calendar business.
SD-419

Governmental Affairs
To hold hearings on regulatory reform.
SD-342

10:30 a.m.

Armed Services
To hold hearings on the nomination of Milton L. Lohr, of California, to be Deputy Under Secretary of Defense for Acquisition.
SR-222

2:00 p.m.

Energy and Natural Resources
Public Lands, National Parks and Forests Subcommittee
To hold hearings on H.R. 4068, to strengthen the enforcement provisions of the Archaeological Resources Protection Act of 1979, S. 1314, to prohibit attempted excavation, removal, or defacing, and to reduce the felony threshold value of illegally removed artifacts to $500, S. 1985, to improve the protection and management of archaeological resources on Federal land, S. 2545, to redesignate Salinas National Monument in New Mexico, S. 2617, to revise the boundary of Aztec Ruins National Monument in New Mexico, S. 2750, to authorize a study on wetlands to commemorate the nationally significant contributions of Georgia O'Keefe, and S. 2767, to authorize a study of the history and culture of Warm Springs, New Mexico, in order to preserve its historic and cultural legacy for future generations.
SD-366

SEPTEMBER 15

9:30 a.m.

Commerce, Science, and Transportation
Communications Subcommittee
To hold hearings on S. 2657, Campaign Cost Reduction Act.
SD-562

Foreign Relations
War Powers Subcommittee
To resume hearings to review the War Powers Resolution of 1973 (P.L. 93-148).
SD-419

Judiciary
Technology and the Law Subcommittee
To resume hearings to discuss the assessment of the threat presented by high technology terrorism and the Government's response to that threat.
SD-266

SEPTEMBER 16

9:30 a.m.

Commerce, Science, and Transportation
Surface Transportation Subcommittee
To hold hearings on state taxation of interstate transportation.
SD-628

Environment and Public Works
Business meeting, to consider pending calendar business.
SD-406

10:00 a.m.
Foreign Relations
War Powers Subcommittee
To continue hearings to review the War Powers Resolution of 1973 (P.L. 93-148).
SD-419

10:30 a.m.
Environment and Public Works
Environmental Protection Subcommittee
Hazardous Wastes and Toxic Substances Subcommittee
To resume joint hearings on the greenhouse effect and policies to mitigate adverse climate change.
SD-406

2:00 p.m.
Governmental Affairs
To hold hearings on the nominations of James H. Atkins, of Arkansas, Stephen E. Bell, of Virginia, and John D. Davenport, of Oklahoma, each to be a Member of the Federal Retirement Thrift Investment Board, and Bert H. Mackie, of Oklahoma, to be a Governor of the U.S. Postal Service.
SD-342

SEPTEMBER 19

2:00 p.m.
Energy and Natural Resources
To hold hearings on the effect of global atmospheric change on domestic forest resources.
SD-366

SEPTEMBER 20

9:00 a.m.
Energy and Natural Resources
To resume hearings on S. 2667, to establish a national energy policy to reduce the generation of carbon monoxide and trace gases in order to slow the pace and degree of atmospheric warming and global climate change, focusing on titles XIV, XV, and XVI, and the relationship of international deforestation and development policies to global atmospheric change.
SD-366

9:30 a.m.
Governmental Affairs
To hold hearings on S. 2298, to require the Administrator of the General Services Administration to encourage the development and use of plastics derived from certain commodities, and to include such products in the GSA inventory for supply to Federal agencies.
SD-342

Rules and Administration
Business meeting, to consider a report on the operation of the Senate, and a report on impeachment proceedings pursuant to instructions of the Senate.
SR-301

1:30 p.m.
Commerce, Science, and Transportation
Foreign Commerce and Tourism Subcommittee
To hold oversight hearings to review the U.S. and foreign commercial service.
SD-562

SEPTEMBER 21

9:30 a.m.
Banking, Housing, and Urban Affairs
Housing and Urban Affairs Subcommittee
To resume hearings on a staff report on the proposed National Affordable Housing Act.
SD-538

SEPTEMBER 22

9:30 a.m.
Banking, Housing, and Urban Affairs
Housing and Urban Affairs Subcommittee
To continue hearings on a staff report on the proposed National Affordable Housing Act.
SD-538

Commerce, Science, and Transportation
To hold hearings to examine airline concentration at hub airports.
SD-562

2:30 p.m.
Finance
To hold hearings to examine the role of the Federal Government on child care services, and to review proposed changes to current law relating to child care issues.
SD-215

SEPTEMBER 27

9:30 a.m.
Governmental Affairs
To resume hearings to review the causes and consequences of alcohol abuse and alcoholism in the United States.
SD-342

Veterans' Affairs
To hold joint hearings with the House Committee on Veterans' Affairs to review legislative priorities of the American Legion.
SD-106

SEPTEMBER 28

9:00 a.m.
Office of Technology Assessment
The Board, to meet to consider pending business.
S-146, Capitol

9:30 a.m.
Banking, Housing, and Urban Affairs
Housing and Urban Affairs Subcommittee
To resume hearings on a staff report on the proposed National Affordable Housing Act.
SD-538

10:00 a.m.
Commerce, Science, and Transportation
Merchant Marine Subcommittee
To hold hearings on S. 2728, to permit coal to be transported in foreign flag vessels between the States of Alaska and Hawaii without regard to section 27 of the Merchant Marine Act of 1920, and S. 2729, to allow certain foreign-flag vessels to carry passengers among ports in Alaska and between points in Alaska and Seattle, Washington.
SD-562

Governmental Affairs
To continue hearings to review the causes and consequences of alcohol abuse and alcoholism in the United States.
SD-342

SEPTEMBER 29

10:00 a.m.
Agriculture, Nutrition, and Forestry
Agricultural Research, and General Legislation Subcommittee
To hold joint hearings with the House Committee on Agriculture's Subcommittee on Department Operations, Research, and Foreign Agriculture on critical challenges facing agricultural research.
SR-332

OCTOBER 3

2:00 p.m.
Governmental Affairs
To resume hearings on regulatory reform.
SD-342

OCTOBER 5

10:00 a.m.
Governmental Affairs
To hold hearings on S. 2721, Federal Advisory Committee Act Amendments of 1988.
SD-342

CANCELLATIONS

SEPTEMBER 13

2:00 p.m.
Governmental Affairs
To hold hearings on the nomination of John Alderson, of Virginia, to be Administrator of General Services.
SD-342